

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VALERITAS HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 20-10290 (JKS)

(Jointly Administered)

Obj. Deadline: June 28, 2023 at 4:00 p.m. (ET)

Hearing Date: July 11, 2023 at 2:30 p.m. (ET)

**MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER EXTENDING
THE TERM OF THE CREDITORS' TRUST**

Emerald Advisors Capital Corp., in its capacity as the liquidating trustee of the Creditors Trust of Valeritas Holding, Inc. *et al.* ("Liquidating Trustee"), established by the *Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* [Docket No. 283] (the "Plan"),² in the above-captioned Chapter 11 bankruptcy proceeding of the above captioned debtors and debtors-in-possession (collectively, the "Debtors"), hereby moves (the "Motion"), pursuant to Article VII, section 7.4(f) of the Plan, Article III, section 3.1 of the Creditors' Trust Agreement (as defined below), section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court for the entry of an order, substantially in the form annexed hereto as **Exhibit A** (the "Proposed Order"), (i) extending the term of the Creditors' Trust through and including earlier of (a) the date, in the Liquidating Trustee's sole and exclusive discretion, of the finalization of the Creditors' Trustee's liquidation, administration and distribution of the Creditors' Trust Assets and its full performance of all other duties and functions as set forth in the Plan and

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 c/o DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.



Creditors' Trust Agreement, and (b) June 30, 2024. In support of the Motion, the Liquidating Trustee respectfully represents and states as follows:

JURISDICTION AND STATUTORY AUTHORITY

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory bases for the relief sought herein are Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9006(b)(1).

BACKGROUND

A. General Background

3. On February 9, 2020 (the "Petition Date"), each of the Debtors commenced a case by filing petitions for relief under Chapter 11 of the Bankruptcy Code.

4. On June 8, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Revised Order (I) Approving Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation as Containing Adequate Information of a Final Basis and (II) Confirming Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of Valeritas Holdings, Inc. and Its Debtor Affiliates* [Docket No. 410] (the "Confirmation Order"), confirming the Debtors' combined disclosure statement and plan of liquidation (the "Plan") [Docket No. 283]. The Plan became effective on June 30, 2020 (the "Effective Date") [Docket No. 436].

5. The Plan and Confirmation Order provide for the establishment of a creditors' trust (the "Creditors' Trust") and the appointment of the Liquidating Trustee on the Effective Date according to the terms and conditions of the *Creditors' Trust Agreement* (the "Creditors' Trust Agreement") [Docket No. 412]. Pursuant to the Confirmation Order, the Liquidating Trustee was appointed as trustee of the Creditors' Trust.

B. Creditors' Trust's Recent and Ongoing Activities

6. Over the last three years the Liquidating Trustee has been focused on marshalling the Debtors' assets that transferred to the Creditors' Trust pursuant to the Plan, as well as reviewing and reconciling the filed and unmatched scheduled claims against the Debtors' estates. During that time, the Liquidating Trustee extended the Creditors' Trust for two terms of one year each, as permitted by the terms of the trust without Court approval.

7. To that end, on February 8, 2022, the Liquidating Trustee commenced an adversary proceeding against the former directors and officers of the Debtor for breaches of fiduciary duties and aiding and abetting the same. *See Trustee's Original Complaint* (the "D&O Action") [22-50108 Adv. Docket. No. 1]. The complaint included allegations concerning the board's failure to effectively monitor, disclose, and implement an enterprise risk management and compliance program related to the Debtors' V-Go® product production. *See id.* Following motion practice and a mediation, the parties settled the D&O Action, and the Court approved the settlement on February 21, 2023. *See* 22-50108 Adv. Docket. No. 67. The settlement resulted in the recovery to the Creditors' Trust of over \$3,000,000.00.

8. The Liquidating Trustee is in the process of distributing the settlement proceeds to the Creditors' Trust beneficiaries. In doing so, the Liquidating Trustee needs additional time to ensure payments are received by the beneficiaries and the appropriate checks are cashed before winding down its affairs.

C. The Current Term of the Creditors' Trust

9. Pursuant to the Plan:

The Creditors' Trust shall have an initial term of one (1) year; provided, however that, if warranted by the facts and circumstances an extension of the term of the Creditors' Trust is necessary to accomplish the purposes of the Creditors' Trust, then the Creditor Trustee shall be authorized to extend the Creditors' Trust for up to two (2) additional terms of one year each (for a total of two (2) additional years). The Creditors' Trust may be terminated earlier than its scheduled termination if the Creditor Trustee has administered all of the Creditors' Trust Assets and performed all other duties required by this Plan and the Creditors' Trust Agreement. As soon as practicable after the final Distribution Date, the Creditor Trustee shall seek entry of a Final Order closing the Case pursuant to section 350(a) of the Bankruptcy Code.

Plan, Art. VII, Section 7.4(f).

10. Pursuant to the Creditors' Trust Agreement:

The Creditors' Trust shall become effective upon the Effective Date of the Plan. The Creditors' Trust shall have an initial term of one (1) year; provided, however that, if warranted by the facts and circumstances an extension of the term of the Creditors' Trust is necessary to accomplish the purposes of the Creditors' Trust, then the Liquidating Trustee shall be authorized to extend the Creditors' Trust for up to two (2) additional terms of one year each (for a total of two (2) additional years) without Bankruptcy Court approval. The Creditors' Trust may be terminated earlier than its scheduled termination upon Bankruptcy Court order, or if the Liquidating Trustee has administered all of the Creditors' Trust Assets and performed all other duties required by the Plan, the Confirmation Order and the Creditors' Trust Agreement. As soon as practicable after the final Distribution Date, the Liquidating Trustee shall seek entry of a Final Order closing any open Bankruptcy Case pursuant to section 350(a) of the Bankruptcy Code.

Creditors' Trust Agreement, § 3.1.

11. As the Effective Date was June 30, 2020, the present date on which the Creditor's Trust will terminate under the terms of the Plan and the Creditors' Trust Agreement is June 30, 2023 (the "Creditors' Trust Termination Date").

RELIEF REQUESTED

12. Absent the entry of an order by this Court, the Creditors' Trust will terminate on July 30, 2023. *See* Plan, Art. VII, § 7.4(f); Creditors' Trust Agreement, § 3.1. As such, the Liquidating Trustee seeks the entry of an order, substantially in the form of the Proposed Order, pursuant to Article VII, Section 4.1(f) of the Plan, Section 3.1 of the Creditors' Trust Agreement, Section 105(a) of the Bankruptcy Code, and Bankruptcy Rule 9006(b)(1), (1) extending the Creditors' Trust Termination Date through the earlier of (a) the date, in the Liquidating Trustee's sole and exclusive discretion, of the finalization of the Creditors' Trust's liquidation, administration and distribution of the Creditors' Trust Assets and its full performance of all other duties and functions as set forth in the Plan and Creditors' Trust Agreement, and (b) June 30, 2024. The Liquidating Trustee further requests that the extension proposed herein be without prejudice to his right to seek further extensions of the Creditors' Trust Termination Date, as necessary.

BASIS FOR RELIEF

A. Extension of the Creditors' Trust Term

13. As noted above, the Plan specifically contemplates an extension of the Creditors' Trust Termination Date by the Court. *See* Plan, Art. VII, § 7.4(f); Creditors' Trust Agreement, § 3.1.

14. In addition, this Court has the authority to extend the Creditors' Trust Termination Date pursuant to section 105(a) of the Bankruptcy Code, which provides that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In doing so, the Court is not precluded from "taking any action or making any determination necessary or appropriate to enforce or implement court orders [such as the Confirmation Order] or rules, or to prevent an abuse of process." *Id.*

15. Furthermore, Bankruptcy Rule 9006(b)(1) permits the Court, in its discretion, to extend the Trust Termination Date for cause, with or without motion or notice. Bankruptcy Rule 9006(b)(1) provides:

[W]hen an act is required or allowed to be done at or within a specified period ... by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefore is made before expiration of the period prescribed or as extended by a previous order

Fed. R. Bankr. P. 9006(b)(1). Here, the Liquidating Trustee is making this request prior to the current Creditors' Trust Termination Date. Accordingly, this request is timely under Bankruptcy Rule 9006(b)(1).

16. Although Bankruptcy Rule 9006 does not define "cause," it has been noted that "courts should be liberal in granting extensions of time sought before the period to act has elapsed, as long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused" 10 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 9006.06 (16th ed. 2023). In the context of determining whether "cause" exists regarding extensions of time, courts have considered such factors as the size and complexity of the issues involved, the debtors' good faith progress in resolving issues, the amount of time elapsed in the case, and whether any prejudice will result to the creditors. *See, e.g., In re Express One Int'l.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996).

17. Sufficient cause exists to grant the requested extension of the Creditors' Trust Termination Date. Since the Effective Date, the Liquidating Trustee has worked with his professionals to reconcile the 234 filed and unmatched scheduled claims asserted against the Debtors and litigate and or settle Debtors' claims against third parties and otherwise liquidate the Creditors' Trust Assets. With respect to the claims, the Liquidating Trustee has (i) diligently reviewed and reconciled each of the claims asserted against the Debtors' estates, (ii) engaged with

claimants to resolve claims whenever possible, and (iii) prosecuted and litigated objections to claims, resulting in substantial reductions of the claims asserted against the Debtors' estates. More importantly, the Liquidating Trustee prosecuted and eventually settled the D&O Action, resulting in a \$3,000,000 recover to the Creditors' Trust. Consequently, the Liquidating Trustee is in the process of distributing the settlement proceeds to the beneficiaries of the Creditors' Trust. The Liquidating Trustee needs additional time to do so.

18. In short, given the status of the Debtors' chapter 11 case extending the Creditors' Trust is in the best interest of creditors (now, the beneficiaries of the Creditors' Trust), all parties-in-interest and judicial economy and avoids substantial prejudice to the Creditors' Trust and its beneficiaries that would be likely caused by potentially forcing the termination of the Creditors' Trust prior to the distribution of the settlement proceeds or the orderly completion of claims reconciliation and distributions. Accordingly, the Liquidating Trustee requests that this Court enter an order extending the current Creditors' Trust Termination Date to the earlier of (a) the date, in the Liquidating Trustee's sole and exclusive discretion, of the finalization of the Creditors' Trust's liquidation, administration and distribution of the Creditors' Trust Assets and its full performance of all other duties and functions as set forth in the Plan and Creditors' Trust Agreement, and (b) June 30, 2024.

RESERVATION OF RIGHTS

19. The Liquidating Trustee reserves his right to seek further extensions of the Creditors' Trust Termination Date, as necessary.

NOTICE

20. Notice of this Motion has been provided to (i) the Office of the United States Trustee and (ii) all parties who have filed a notice of appearance and request for service of papers in these chapter 11 cases. In light of the nature of the relief requested, the Liquidating Trustee submits that no other or further notice need be given.

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WHEREFORE, the Liquidating Trustee respectfully requests that the Court enter an order, substantially in the form of the Proposed Order, (i) extending the current Creditors' Trust Termination Date to the earlier of (a) the date, in the Liquidating Trustee's sole and exclusive discretion, of the finalization of the Creditors' Trust's liquidation, administration and distribution of the Creditors' Trust Assets and its full performance of all other duties and functions as set forth in the Plan and Creditors' Trust Agreement, and (b) June 30, 2024, and granting such other and further relief as the Court deems appropriate under the circumstances.

Dated: June 14, 2023

MORRIS JAMES LLP

/s/ Tara C. Pakrouh

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Valeritas Holding, Inc. et al.*

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VALERITAS HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

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**NOTICE OF MOTION OF THE LIQUIDATING TRUSTEE
FOR AN ORDER EXTENDING THE TERM OF THE CREDITORS' TRUST**

PLEASE TAKE NOTICE Emerald Advisors Capital Corp., in its capacity as the liquidating trustee of the Creditors Trust of Valeritas Holding, Inc. *et al.*, established by the *Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* [Docket No. 283] in the above-captioned Chapter 11 bankruptcy proceeding of the above captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through its counsel, has filed the *Motion of the Liquidating Trustee for an Order Extending the Term of the Creditors' Trust* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE THAT that objections, if any, to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court 824 Market St. 3rd Floor, Wilmington, Delaware 19801, and served, so as to be received by the undersigned no later than **June 28, 2023 at 4:00 p.m. (ET)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE THAT a hearing on the Motion is scheduled to be heard on **July 11, 2023 at 2:30 p.m. prevailing Eastern Time** before the Honorable J. Kate Stickles, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom #6, Wilmington, Delaware 19801.

IF NO OBJECTIONS ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN CONNECTION WITH SUCH PLEADINGS WITHOUT FURTHER NOTICE OR HEARING.

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 c/o DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020.

Dated: June 14, 2023

MORRIS JAMES LLP

/s/ Tara C. Pakrouh

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*Counsel for Emerald Advisors Capital Corp., as
Liquidating Trustee for the Creditors Trust of
Valeritas Holding, Inc. et al.*

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VALERITAS HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 20-10290 (JKS)

(Jointly Administered)

Docket Ref. No. __

ORDER EXTENDING THE TERM OF THE CREDITORS' TRUST

Upon consideration of the *Motion of the Liquidating Trustee for an Order Extending the Term of the Creditors' Trust* (the "Motion");² and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that notice of the Motion was good and sufficient under the circumstances and that no other or further notice need be given; and the Court having considered the Motion and any responses thereto; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the Creditors' Trust Termination Date is hereby extended such that the Creditors' Trust shall terminate on the earlier of (a) the date, in the Liquidating Trustee's sole and exclusive discretion, of the finalization of the Creditors' Trust's liquidation, administration and distribution of the Creditors' Trust Assets and its full performance of all other duties and functions as set forth in the Plan and Creditors' Trust Agreement, and (b) June 30, 2024; and it is further

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² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, that this Order is without prejudice to the Liquidating Trustee's right to seek further extensions of the Creditors' Trust Termination Date; and it is further

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of the Order.