UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	
	)	Case No. 18-07762-JJG-11
FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC. d/b/a FAYETTE REGIONAL HEALTH SYSTEMS, Debtor.	)	

OBJECTION TO CLAIMS OF
THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
AND NOTICE OF RESPONSE DEADLINE
Claim Nos. 101, 256, 268 and 269

NOTICE

YOUR CLAIM MAY BE REDUCED, MODIFIED OR ELIMINATED. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to enter an order affecting your claims, then on or before **April 28, 2021** (**30 days** from the date of service considering Federal Holidays), you or your lawyer must file a written response to the objection explaining your position.

Those not permitted to file electronically must deliver any response by U.S. Mail, courier, overnight/express mail, or in person at:

116 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

If you mail your response to the court, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also send a copy of your response to: Wendy D. Brewer, Fultz Maddox Dickens PLC, 333 N. Alabama Street, Ste. 350, Indianapolis, IN 46204; and/or Laura M. Brymer, Fultz Maddox Dickens PLC, 101 S. Fifth Street, 27th Floor, Louisville, KY 40202.

If you or your attorney do not take these steps, the Court may decide you do not oppose an order affecting your claim and the Court may grant the relief requested by the Objection. If a response is timely filed, a **telephonic hearing** will take place **on May 12, 2021 at 1:30P.M.** before the Honorable Jeffrey J. Graham, United States Bankruptcy Court, 877-848-7030, Access Code 8891756.

OBJECTION TO CLAIMS

Fayette Memorial Hospital Association, Inc., d/b/a Fayette Regional Health Systems ("**Fayette**" or the "**Debtor**") the debtor and debtor-in-possession, pursuant to Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure, hereby files its *Objection to the Claims of The Indiana Department of Workforce Development* (the "**Objection**") and objects to Claim Nos. 101, 256, 268, and 269 filed by the Indiana Department of Workforce Development ("**IDWD**"). In support of its Objection, the Debtor states as follows:

JURISDICTION AND VENUE

1. On October 10, 2018 (the "**Petition Date**"), the Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**").

2. At all times relevant, the Debtor acted as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. The official committee of unsecured creditors was appointed on December 5, 2018 (the "**Committee**"). *See* Notice of Appointment of Unsecured Creditors' Committee [DN 136].

4. On February 19, 2021, the Court entered its *Order Confirming Joint Plan of Liquidation* [DN 1134] (the "**Confirmation Order**") by which the Court approved confirmation of the *Immaterially Modified Joint Chapter 11 Plan of Liquidation* [DN 1067] (the "**Plan**").

5. Pursuant to the Confirmation Order and the Plan, the Committee was dissolved, and Bernadette Barron of Barron Business Consulting, Inc., was appointed as the Plan Administrator for the Debtor (the "**Plan Administrator**") with the authority to take such actions on behalf of the Debtor as necessary to consummate and implement the Plan, including but not limited to filing objections to claims asserted by and against the Debtor's estate.

6. Pursuant to the terms of the Confirmation Order, administrative expense claims for the period from September 1, 2019 through the date of confirmation were required to be filed by

March 19, 2021, and objections to claims must be filed on or before August 18, 2021, or such later date as may be approved by this Court.

7. This is an objection pursuant to 11 U.S.C. 502(b). This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334.

8. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

9. Venue is proper in this Court under 28 U.SC. §§ 1408 and 1409.

10. The statutory basis for the relief requested herein are Sections 105(a), 502 and 507 of the Bankruptcy Code, and Rules 3001 and 3007 of the Bankruptcy Rules.

FACTS RELEVANT TO THIS OBJECTION

11. On or about April 8, 2019, the IDWD filed Proof of Claim No. 101 asserting a general unsecured claim in the amount of $2,157.91 for unemployment tax obligations on Account No. x3272 incurred during February and March of 2019 ("**Original Claim No. 101**") and referenced Account.

12. On January 3, 2020, the IDWD filed an amendment to Original Claim No. 101 increasing its general unsecured claim to $9,584.47 and indicating it was for unemployment tax obligations on Account No. x3861 incurred during September, October, November and December of 2019, and January of 2020, together with certain penalties and interest charges (the "**Amended Claim No. 101**" and together with Original Claim No. 101, "**Claim No. 101**").

13. On January 7, 2020, the IDWD filed Proof of Claim No. 256 which did not indicate that it was an amendment to a prior filed claim. Proof of Claim No. 256 asserted a general unsecured claim in the amount of $115,423.36 indicating it was for unemployment tax obligations incurred on Account x3272 during the period from September 2019 through January 2020, together with certain penalties and interest charges ("**Claim No. 256**").

14. On January 22, 2021, the IDWD filed Proof of Claim No. 268 indicating it was intended as an amendment to Claim No. 101. Proof of Claim No. 268 asserted a general unsecured claim in the amount of $203,800.71 indicating it was for unemployment tax obligations incurred on

both Account x3272 and x3861 during the period from September 2019 through January 2021, together with certain penalties and interest charges ("**Claim No. 268**").

15. On January 25, 2021 the IDWD filed Proof of Claim No. 269 indicating it was intended as an amendment to Claim No. 268. Proof of Claim No. 269 asserted a general unsecured claim in the amount of $203,800.71 but indicated the basis for the claim was "administrative claim" and indicating it was for unemployment tax obligations incurred on both Account x3272 and x3861 during the period from September 2019 through January 2021, together with certain penalties and interest charges ("**Claim No. 269**").

16. Based upon communication with counsel for the IDWD, the Debtor believes that Claim No. 269 was intended as the sole surviving claim of the IDWD.

17. Furthermore, the statements and invoices for the unemployment taxes were mailed by the IDWD to the Debtor's former address at 1941 Virginia Avenue, Connersville, IN 47331 and were not forwarded to the Debtor.

RELIEF REQUESTED BY THIS OBJECTION

18. By this objection, the Debtor seeks to: (a) disallow Claim Nos. 101, 256 and 268 as duplicate claims that have been superseded and amended by Claim No. 269; (b) disallow a portion of the surviving Claim No. 269 to the extent it seeks to recover penalties and interest; and (c) reduce and allow Claim No. 269 as an administrative expense claim against the Debtor's estate in the principal amount of $168,368.88, to be treated as a Class 2B claim under the terms of the Plan.

BASIS FOR RELIEF REQUESTED

19. The statutory bases for the relief requested herein are 11 U.S.C. §§ 105(a), 502, and 507 and Rules 3001 and 3007 of the Bankruptcy Rules.

20. At all times relevant hereto, as a not-for-profit entity, the Debtor opted to be a "reimbursing employer" with regard to unemployment tax liabilities. Instead of making regular

required quarterly contributions based on a percentage of total payroll, the Debtor was obligated to reimburse the IDWD for benefits payments made to its former employees.

21. Under Indiana law, for purposes of determining the obligation to pay unemployment benefits, a responsible employer is identified by looking at the employees 18-month employment history. The IDWD therefore contends that although the Debtor ceased day-to-day operations and had no employees after July 15, 2019, as a reimbursing employer, the Debtor remained liable to reimburse the IDWD for its pro-rata share of benefits paid to the Debtor's former employees within that 18-month lookback period.

22. As set forth above, based upon communication with counsel for the IDWD, the Debtor believes that Claim No. 269 was intended as the sole surviving claim of the IDWD. Furthermore, the documentation attached to the various claims supports this belief and demonstrates that the claims are duplicative of one another.

23. Furthermore, the statements and invoices for the unemployment taxes were mailed by the IDWD to the Debtor's former address at 1941 Virginia Avenue, Connersville, IN 47331 and were not forwarded to the Debtor. The Debtor should not be required to pay penalties and interest imposed as a result of nonpayment of invoices and statements it did not receive until attached to the filed claims.

WHEREFORE, the Debtor prays that: (a) Claim Nos. 101, 256 and 268 be disallowed as duplicate claims that have been superseded and amended by Claim No. 269; (b) the portion of Claim No. 269 seeking payment of penalties and interest be disallowed; and (c) Claim No. 269 be allowed as an administrative expense claim against the Debtor's estate only in the principal amount of $168,368.88 (to be treated as a Class 2B claim under the Plan).

Respectfully submitted this 29th day of March, 2021,

/s/ Wendy D. Brewer

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Attorneys for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Objection* was filed electronically this 29th day of March, 2021. Notice of this filing will be sent to all parties registered to receive such notice by operation of the Court's electronic filing system and by U.S. Mail to the creditor identified below. Parties may access this filing through the Court's electronic filing system.

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