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.	)	
	)	

MOTION TO COMPROMISE AND SETTLE CLAIMS
ASSERTED AGAINST QUIDEL CORPORATION

Fayette Memorial Hospital Association, Inc., d/b/a Fayette Regional Health Systems ("**Fayette**" or the "**Debtor**") pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, hereby petitions the Court for approval to settle and compromise certain claims that the Debtor has asserted against Quidel Corporation ("**Quidel**") for avoidance and recovery of certain transfers pursuant to Sections 105, 547 and 550 of Title 11 of the United States Code (the "**Bankruptcy Code**"). In support of the Motion, the Debtor respectfully 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 the Bankruptcy Code.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Motion in this District 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)(F).

3. The Debtor continues as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

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

BACKGROUND FACTS RELEVANT TO THIS MOTION

5. In the 90 days preceding the Petition Date, the Fayette made one or more transfers to Quidel in the total amount of $13,880.00 (the "**Transfers**").

6. On January 2, 2020, pursuant to 11 U.S.C. §547(b), Fayette, in its capacity as debtor and debtor-in-possession, made demand (the "**Demand**") upon Quidel for recovery of the Transfers, less a 5% settlement discount, and pursuant to 11 U.S.C. §550, sought to recover $13,186.00.

7. Subject to approval of the Court, the Debtor and Quidel have entered into a Settlement Agreement dated as of February 26, 2020 (the "**Agreement**"). A true and correct copy of the Agreement is attached hereto as Exhibit A.

8. Pursuant to the Agreement, the Debtor has agreed, among other things, to accept $11,867.40 as the Settlement Payment (as defined in the Agreement), and the Settlement Payment (as defined in the Agreement) in the amount of $11,867.40, has been deposited into the IOLTA Account for Debtor's counsel.

9. Quidel has not agreed to waive any right(s) under Section 502(h) of the Bankruptcy Code to file a proof of claim (or to modify an existing proof of claim) to assert a claim for the Settlement Payment in this Case.

10. The Debtor, with the consent of the Committee, believes the terms of the Agreement are reasonable, appropriate under the circumstances, and in the best interests of the bankruptcy estate.

11. A proposed form of Order is attached hereto as Exhibit B.

RELIEF REQUESTED BY THIS MOTION

12. By this Motion, the Debtor seeks entry of an order authorizing the Debtor to compromise and settle the avoidance and recovery claims asserted against Quidel as part of the Demand (the "**Claims**"), on the terms set forth in the Agreement.

BASIS FOR RELIEF REQUESTED

13. Federal Rule of Bankruptcy Procedure 9019(a) provides that the Court may approve a compromise or settlement after motion by the Debtor, notice to creditors, and a hearing.

14. Approval of a proposed settlement rests solely in the discretion of the bankruptcy court. *Matter of Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992). While the Court must "determine whether the proposed settlement is fair and equitable and in the best interests of the estate[,]" the Court is not required to conduct a full evidentiary hearing regarding the propriety of settlement. *Depoister v. Mary M. Holloway Foundation*, 36 F.3d 582, 586-87 (7th Cir. 1994). Stated differently, in reaching a decision on whether to approve a settlement, the Court must make an informed and independent judgment but need not make an independent investigation of the facts, and it may give weight to the trustee's informed judgment and consider the competency and experience of counsel supporting the compromise. *Mary M. Holloway Foundation*, 36 F.3d 582; *In re la Distr. Ctrs., Inc.,* 103 B.R. 420, 422-23 (S.D.N.Y. 1989).

15. The factors relevant to the Court's inquiry include (a) the probability of success in the litigation; (b) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (c) the paramount interest of creditors. *In re American Reserve Corp.,* 841 F.2d 159, 161 (7th Cir. 1987); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007).

16. The Debtor believes that the proposed settlement is a reasonable exercise of sound business judgment and is in the best interest of creditors for the following reasons:

a. Given the evidence and other information before the Debtor, there is a risk that the Debtor will either not prevail at trial on some or all of the claims related to the Transfers, or will not recover on any judgment obtained;

b. The added cost and expense of a trial has the likelihood of outweighing the benefit of funds that could come into the estate based on claims for the Transfers; and

c. It is in the best interest of creditors and this estate that the Debtor not spend any additional time and cost on recovery of the Transfers.

WHEREFORE, based upon the foregoing, the Debtor respectfully requests entry of an order: (a) approving this compromise and settlement on the terms set forth in this Motion and in the Agreement; and (b) authorizing the Debtor to execute all necessary documents and releases as required to complete the settlement, including but not limited to the Agreement; and (c) providing all other just and proper relief.

Respectfully submitted this 30th day of March, 2020,

/s/ Wendy D. Brewer

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Attorneys for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion* was filed electronically this 30th day of March, 2020. Notice of this filing will be sent to all parties registered to receive such notice by operation of the Court's electronic filing system, all parties who have specifically requested notice of 9019 Settlement Motions, and counsel for Quidel, Jill H. Perella, Snell & Wilmer, L.L.P. at jperella@swlaw.com. Parties may access this filing through the Court's electronic filing system.

/s/ Wendy D. Brewer
Wendy D. Brewer (#22669-49)