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Hearing Date: March 5, 2014 @ 11:00 a.m.
Objection Deadline: February 26, 2014 @ 11:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
ST. FRANCIS' HOSPITAL, POUGHKEEPSIE, NEW YORK, *et al.*,[1]	:	**Case No. 13-37725 (CGM)**
	:	**(Jointly Administered)**
Debtors.	:	

DEBTORS' MOTION FOR AN ORDER APPROVING CERTAIN SETTLEMENTS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

St. Francis' Hospital, Poughkeepsie, New York ("St. Francis") and its affiliated debtors, as debtors in possession (collectively, the "Debtors"), respectfully represent:

BACKGROUND

1. On December 17, 2013 (the "Petition Date"), the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: St. Francis' Hospital, Poughkeepsie, New York (8503), Saint Francis Home Care Services Corporation (3842), SFH Ventures, Inc. (0024), Saint Francis Health Care Foundation, Inc. (5066), and Saint Francis Hospital Preschool Program (1079).

Court. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On December 23, 2013, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee"). No trustee or examiner has been appointed in these chapter 11 cases.

3. The Debtors chapter 11 cases were consolidated for procedural purposes only and jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

The Debtors' Business

4. Founded in 1914, St. Francis has been dedicated to serving the healthcare needs of the residents of the Hudson Valley for a century.

5. The Debtors serve more than 125,000 patients annually (excluding added homecare patients) and employ approximately 2,000 full and part-time employees. In 2012, the Debtors serviced approximately 8,000 inpatient discharges, 32,000 emergency room visits, 38,000 home care visits, and 150,000 outpatient visits. The hospital has 333 beds and the capability to serve patients with various physical and mental health issues. In 2012, the Debtors had gross revenues of almost $150 million and an operating loss of approximately $7.7 million.

6. The Debtors provide a wide array of medical service to their community, including:

A. Emergency Treatment: The Debtors are the home to the area's only Level II Trauma center that provides lifesaving care to severely injured patients. Over 9,000 trauma victims are cared for annually, making St. Francis' Level II Trauma center the busiest Level II Trauma Center in New York State.

B. Mental Health and Addiction Services: The Debtors are the region's recognized leader in providing mental health services. In addition, the Turning Point at St. Francis is a comprehensive not-for-profit chemical dependency treatment program that provides inpatient medically-managed detoxification from alcohol and all other types of substances, inpatient and outpatient rehabilitation, and a variety of specialized intensive outpatient programs, outpatient counseling, and support groups.

C. Robotic Surgery: The Center for Robotic Surgery offers patients an array of minimally-invasive surgical approaches through the use of the da Vinci surgical system. Robotic surgery is available for patients undergoing a wide variety of thoracic, urological, gynecological and oncological procedures.

D. Physical and Occupational Therapy: The Debtors' Physical and Occupational Therapy program treats a whole spectrum of diagnoses, including; neck pain, back pain, knee pain, foot and ankle pain, hand and wrist pain, shoulder pain, pre-surgical and post-surgical therapy needs, auto accidents and sports injuries, fractures, dizziness/light-headedness, balance problems, weakness, cancer related problems and stroke.

E. Cancer Treatment: The Herb & Sue Ann Redl Center for Cancer Care offers advanced treatments for all major cancers including breast, lung, colon, and other digestive tract, prostate, bladder, lymphoma and melanoma.

F. Home Care: The Debtors provide home health services, including nursing care, physical therapy, occupational therapy and speech therapy to patients in the comfort of their homes.

G. Special Needs Preschool: The Debtors also run a Special Needs Preschool Program and Center for Communication Disorders, which are regional leaders in providing language-based rehabilitation services to children and adults. The special needs preschool program serves children from 18 months to 5 years that have been diagnosed with developmental disabilities. It is the county's only program for autistic preschool-aged children and also provides early intervention services for children under 3 years of age, in addition to evaluation and treatment for speech, language, hearing and swallowing. The center is also a Center for Communication Disorders satellite site serving adults and children with speech, hearing and swallowing disorders.

7. The "CREST of Values" serves as the guiding principles for the Debtors' mission. Each member of the Debtors' team works individually and collaboratively to make their core values of Compassionate Care, Respect, Excellence, Service and Teamwork present in all internal dealings within the hospital community and in their interactions with those the Debtors are privileged to serve.

8. Beginning in September 2012, the Debtors implemented a series of new comprehensive information systems in an effort to increase the Debtors' operational efficiency. By October 2012, the Debtors determined that the implementation of the software had failed.

9. The failure of the software implementation under previous management and governance had a significant impact on the Debtors' financial reporting and revenue cycle functions. The implementation failed because, among other things, the Debtors' medical records department and patient billing and collection department were understaffed and

underperforming. In addition, material aspects of the customer defined tables in the software were inadequately prepared.

10. In an effort to rectify these issues, the Debtors engaged several consulting organizations during late 2012 and early 2013. Unfortunately, not enough of the previous and rapidly aging accounts receivable were collected. In addition, ongoing billing issues during later 2012 and early 2013 further strained cash flow.

11. As a result of the failed software implementation, increasing operational costs, increasingly regulated environment, and decreasing admittance levels, the Debtors were forced to explore their restructuring options, including the sale of substantially all of their assets. Ultimately, the Debtors determined that the filing of these chapter 11 cases was in the best interests of their creditors, patients, and other parties in interest.

St. Francis' Relationship with Saint Francis Physician Services PLLC

12. On January 1, 2012, St. Francis entered into an Employment Agreement with J. Keith Festa, M.D. (the "Festa Employment Agreement"), a true and correct copy of which is attached hereto as Exhibit A.

13. Pursuant to the Festa Employment Agreement, Dr. Festa, already St. Francis' Chief Medical Officer, agreed to establish a professional limited liability company, Saint Francis Physicians, PLLC (the "PLLC") and hold the sole membership interest therein for the benefit of St. Francis.

14. St. Francis and the PLLC are parties to a Resource Agreement, dated February 1, 2012 (the "Resource Agreement"), a true and correct copy of which is attached hereto as Exhibit B.

15. Pursuant to the Resource Agreement, St. Francis provides support services to the PLLC, including but not limited to administration and staff employees, day-to-day operations management, and book and record keeping.

16. In exchange, the PLLC pays St. Francis a service fee equal to a percentage of the PLLC's net income.

17. On February 2, 2012, St. Francis entered into a Physician Employment Agreement, effective September 17, 2012 with Mary Dyer, M.D., a true and correct copy of which is attached hereto as Exhibit C.

18. On September 26, 2012, St. Francis entered in to a Physician Employment Agreement, effective October 28, 2012, with Robert Holland, M.D., a true and correct copy of which is attached hereto as Exhibit D. The agreements referred to in Paragraphs 17 and 18 will heretofore be referred to collectively as the "Physician Employment Agreements."

19. Pursuant to the Physician Employment Agreements, Drs. Dyer and Holland are presently assigned to work on a full-time basis for the duration of their three-year terms at and for the PLLC.

20. As a result of St. Francis' Chapter 11 petition and the planned sale of its assets, it is planning to terminate Drs. Dyer and Holland.

21. Thus, in accordance with the federal Worker Adjustment and Retraining Notification Act (the "WARN Act"), 29 U.S.C. §§ 2101-09, and the New York State Worker Adjustment and Retraining Act (the "NY WARN Act"), N.Y. Labor Law Art. 25-A, on December 19, 2013, Drs. Dyer and Holland were advised, in a letter of the same date (the "WARN Notice"), that St. Francis intends to conduct a plant closing or mass layoff that will permanently affect Drs. Dyer and Holland's employment (and the employment of all other St.

Francis employees) and that Drs. Dyer and Holland's termination would occur on or about March 20, 2014, or within 14 days thereafter.

22. Since the WARN Notice was issued to Drs. Dyer and Holland and all other St. Francis employees, including all other employees assigned to work for the PLLC, Dr. Festa, in conjunction with St. Francis, has determined that the PLLC's medical practice is not financially viable.

23. The PLLC currently operates at a loss of approximately $1 million per year and will run out of cash by the end of February 2014.

24. In order to avoid patient abandonment issues and ensure an orderly transition of patients and practices, the PLLC must be closed as soon as possible.

25. As such, on February 28, 2014, the PLLC will cease operations and close all three of its existing practice locations, including the location where Drs. Dyer and Holland are currently assigned.

26. In order to effectuate this closure, St. Francis must terminate the Physician Employment Agreements prior to March 20, 2014.

27. The PLLC's closure and St. Francis' resulting termination of the Physician Employment Agreements prior to March 20, 2014 exposes St. Francis to liability under the WARN Act and NY WARN Act.

28. However, closure of the PLLC is in the best interests of the Debtors' estates and their creditors because it eliminates what has heretofore been a source of negative cash flow.

29. Thus, St. Francis has negotiated settlement agreements with each of Drs. Dyer and Holland (collectively the "Settlement Agreements") that terminate the Physician Employment Agreements, effective February 28, 2014, and absolve St. Francis of any WARN

Act or NY WARN Act liability. True and correct copies of the Settlement Agreements are attached hereto as Exhibits E1 – E2.

Proposed Settlement Agreement

30. The principal terms of the Settlement Agreements, which are subject to approval by this Court, include the following:

A. Drs. Dyer and Holland will voluntarily resign their employment with St. Francis and the Physician Employment Agreements will be considered terminated, effective as of the close of business on February 28, 2014;

B. St. Francis will waive any and all rights to enforce: (a) the six-month notice requirement in Section 12.1 of the Physician Employment Agreements, entitled "Termination by Employee,"; and (b) the restrictive covenants and non-solicitation terms and requirements in Section 13 of the Physician Employment Agreements, entitled "Restrictive Covenant/Non-solicitation";

C. St. Francis will continue to pay Drs. Dyer and Holland for their continued work for the PLLC up to and including February 28, 2014, their last day of employment, at their current annual salary rates and benefits, but any and all obligations of St. Francis to continue paying wages, salary, or benefits of any kind to Drs. Dyer and Holland will cease, effective as of the close of business on February 28, 2014; and

D. Drs. Dyer and Holland will sign a general release (the "General Release") fully and completely releasing and discharging St. Francis from any and all complaints, claims and causes of action, including but not limited to any claims for compensation or benefits under the WARN Act and/or NY WARN Act, and any

and all other State, federal and local laws, as well as claims or causes of action sounding in tort, contract or any other theory.

JURISDICTION

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

RELIEF REQUESTED

32. Debtors respectfully request that this Court enter an order approving the Settlement Agreements, as summarized above, pursuant to Rule 9019 of the Bankruptcy Rules.

33. Rule 9019 states: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct."

34. The Second Circuit Court of Appeals recognizes a general policy in favor of settlements and compromises. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005).

35. Thus, a bankruptcy court reviewing a proposed settlement should approve it when it is fair and equitable and in the best interests of the debtor's estate and creditors. *See Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Breeden v. Sphere Drake Insurance PLC (In re Bennett Funding Group)*, 2003 Bankr. LEXIS 2196 (Bankr. N.D.N.Y. 2003).

36. A court should approve a settlement unless it "fall[s] below the lowest point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (citation omitted); *American Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987).

37. Courts in the Second Circuit often consider the following six factors in determining whether a settlement is within the range of reasonableness, fair and equitable: (1) The likelihood of success in the litigation compared to the benefits of settlement; (2) The prospect of complex and protracted litigation with its attendant expense, inconvenience, and delay and the difficulties associated with collection of any judgment; (3) The paramount interest of the creditors; (4) The degree by which the settlement is supported by other parties in interest; (5) The nature and breadth of the releases to be obtained by officers and directors; and (6) The extent to which the settlement is the product of arm's length bargaining. *In re WorldCom, Inc.*, 347 B.R. 123 (Bankr. S.D.N.Y. 2006) (*citing Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) *and In re Drexel Burnham Lambert Group, Inc.*, 138 B.R. 723, 758 (Bankr. S.D.N.Y. 1992)).

38. Here, the Settlement Agreements are the most fair, reasonable, and economical method by which St. Francis and Drs. Dyer and Holland can resolve the above-referenced issues between them.

39. If Drs. Dyer and Holland were to file WARN Act, NY WARN Act, or other employment-related claims against St. Francis, St. Francis' potential liability would be substantial and its ability to successfully defend itself would be uncertain.

40. The WARN Act requires employers to give employees sixty days' notice of plant closing and mass layoffs. 29 USC § 2102(a).

41. An employer who fails to provide the required notice is liable to each affected employee for back pay for each day that it was in violation of the WARN Act. 29 USC §2104(a)(1).

42. The NY WARN Act requires employers to give employees ninety days' notice of any mass layoff, relocation, or employment loss. NY Labor Law § 860-b.

43. An employer who fails to provide the notice specified by the NY WARN Act is liable to each affected employee for back pay, up to a maximum of sixty days, for each day that it was in violation of the NY WARN Act. NY Labor Law § 860-g(1),(2).

44. A person seeking to impose liability under the WARN Act and/or the NY WARN Act may sue on behalf of all other similarly-situated persons. 29 USC § 2104(a)(5); NY Labor Law § 860-g(7).

45. And, in any such suit, a court, in its discretion, may allow the prevailing party the reasonable attorneys' fees associated with bringing that suit. 29 USC § 2104(a)(6); NY Labor Law § 860-g(7).

46. St. Francis provided the WARN Notice to Drs. Dyer and Holland and all other employees assigned to the PLLC on December 19, 2013.

47. By terminating Drs. Dyer and Holland and all other employees assigned to the PLLC on February 28, 2014, which it must, St. Francis arguably will be in violation of the NY WARN Act for 58 days.

48. Thus, if Drs. Dyer and Holland brought suit, St. Francis could potentially be held liable to each and every employee who was assigned to the PLLC for fifty-eight days of back pay, plus reasonable attorneys' fees.

49. The Settlement Agreements, in contrast, absolve St. Francis of any potential liability, including, but not limited to, WARN Act and NY WARN Act liability, in exchange for St. Francis' waiver of certain notice requirements and restrictive covenants.

50. Thus, the Settlement Agreements eliminate a potentially large source of monetary liability at no cost to the Debtors' estates.

51. While St. Francis arguably would be able to assert certain affirmative defenses against any WARN Act and/or NY WARN Act claims, the Southern District of New York has already recognized that "litigation surrounding the Affirmative Defenses [to a WARN Act claim] would be complex and protected" and that it requires "significant discovery" including "a significant number of depositions and the review and analysis of thousands of documents, emails and other electronic data." *Guippone v. BH S&B Holdings, LLC*, No. 09 Civ. 01029 (CM), 2011 U.S. Dist. LEXIS 126026, * 16 (S.D.N.Y. Oct. 28, 2011).

52. Thus, any litigation of Drs. Dyer and Holland's claims, even if St. Francis successfully defended itself against them, would be expensive, drawn out, and complex.

53. The Settlement Agreements avoid the expense, delay, and uncertainty such litigation would cause to the Debtors' estates and their creditors.

54. The Settlement Agreements were procured through lengthy, arms-length negotiations between Debtors, Debtors' counsel, and Drs. Dyer and Holland.

55. For the foregoing reasons, Debtors submit that the Settlement Agreement is in the best interest of the Debtors' estates and their creditors and respectfully request that this Court approve the Settlement Agreements.

NOTICE

56. The Debtors have provided notice of this Motion in accordance with the *Order Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rules 1015(c) and 9007 to Implement Certain Notice and Case Management Procedures* [Dkt. No. 38].

57. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: February 12, 2013
New York, New York

/s/ Christopher M. Desiderio

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