

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

In re:

SHARITY MINISTRIES, INC.,¹

Debtor.

Chapter 11

Case No. 21-11001 (JTD)

Hearing Date: T.B.D.

Objection Deadline: December 22, 2021 at 4:00 p.m. (ET)

**SECOND MOTION TO EXTEND THE TIME PERIOD WITHIN WHICH THE
DEBTOR MAY FILE NOTICES TO REMOVE ACTIONS PURSUANT TO
28 U.S.C. § 1452 AND RULES 9027 AND 9006 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned counsel, hereby submits the *Second Motion to Extend the Time Period Within Which the Debtor May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* (the “Motion”). In support of the Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.²

¹ The last four digits of the Debtor’s federal tax identification number is 0344. The Debtor’s mailing address is 821 Atlanta Street, Suite 124, Roswell, GA 30075.

² Pursuant to Local Rule 9013-1(f), the Debtor hereby confirms its consent to entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. The legal bases for the relief sought herein are 28 U.S.C. § 1452 of the United States Code and rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

3. On July 8, 2021 (the “Petition Date”), the Debtor commenced the above-captioned chapter 11 case (the “Chapter 11 Case”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code and elected to proceed under subchapter V.

4. The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. On July 9, 2021, the Office of the United States Trustee for Region 3 appointed Holly S. Miller, Esq. as the Subchapter V Trustee.

5. Additional information regarding the circumstances leading to the commencement of the Chapter 11 Case and information regarding the Debtor’s charitable mission is set forth in detail in the *Declaration of Neil F. Luria in Support of Chapter 11 Petition and First Day Motions* [D.I. 5] (“First Day Declaration”).

6. On or about July 19, 2021, the Debtor decided to cease operations and conduct an orderly wind-down. As a result, the Debtor is no longer accepting contributions from members in connection with its health care sharing ministry and is in the process of winding down its business. The board’s decision was based on the Debtor’s business judgment that ceasing operations and winding down would be in the best interests of the members.

7. On August 12, 2021, the Court entered its *Order Holding in Abeyance in Part, and Granting in Part, the United States Trustee’s Motion to Remove the Debtor in Possession Pursuant to 11 U.S.C. § 1185, or Alternatively, Motion to Authorize the Subchapter V Trustee to Investigate*

the Debtor's Financial Affairs Pursuant to 11 U.S.C. § 1183 and Ordering the Appointment of an Official Committee of Members Pursuant to 11 U.S.C. §§ 1181(b) and 1102(a)(2) [D.I. 144] (the "August 12, 2021 Order"). Among other things, the order directed the appointment of an official committee of members (the "Member Committee") and directed the Subchapter V Trustee to investigate the financial affairs of the Debtor and certain other matters.

8. On August 20, the U.S. Trustee filed notice of the appointment of a Member Committee [D.I. 163].

9. On October 1, 2021, the Debtor filed the *Certification of Counsel Regarding Order Approving Stipulation to (I) Withdraw Subchapter V Election, and (II) Grant Related Relief* [D.I. 224], seeking the entry of an order by the Court, approving a stipulation by and between the Debtor, the U.S. Trustee, the Subchapter V Trustee, the Member Committee and various other parties-in-interest to consensually resolve the issue of whether the Debtor is eligible to be a debtor under Subchapter V of the Bankruptcy Code (the "Stipulation"). The Stipulation provides that, among other things, upon approval of the Court, the Debtor's election to proceed under Subchapter V will be deemed withdrawn and will no longer apply, the Subchapter V Trustee's rights and obligations under 11 U.S.C. § 1183 shall be terminated, except that the Subchapter V Trustee shall have the right and obligation to complete her duties identified in the August 12, 2021 Order, and the Member Committee shall remain intact and shall be deemed to be the Official Committee of Unsecured Creditors under 11 U.S.C. § 1102(a) (the "Committee"). On October 4, 2021, the Court entered the *Order Approving the Stipulation to (I) Withdraw Subchapter V Election, and (II) Grant Related Relief* [D.I. 229].

10. Also on October 4, 2021, the Court entered the *Order Granting the Debtor's Motion to Extend the Time Period within which the Debtor May File Notices to Remove Actions Pursuant*

to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure [D.I. 228] (the “Removal Order”), extending the deadline to remove actions through and including January 4, 2022.

11. On December 2, 2021, the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement of a Final Basis and (II) Confirming the Plan of Liquidation of Sharity Ministries, Inc. Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 343] (the “Confirmation Order”) confirming the Debtor’s *Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Sharity Ministries Inc.* (the “Plan”).

RELIEF REQUESTED

12. Pursuant to the Removal Order, the time period by which the Debtor may file notices of removal will expire on January 4, 2022 (the “Removal Deadline”).³ By this Motion, the Debtor seeks entry of an order pursuant to Bankruptcy Rule 9006(b), extending the Removal Deadline for a period of ninety (90) days through and including April 4, 2022 with respect to civil actions pending as of the Petition Date.

13. The Debtor requests that the proposed April 4, 2022 deadline to file notices of removal apply to all matters pending as of the Petition Date as specified in Bankruptcy Rule 9027(a)(2)(A), (B) and (C) (the “Prepetition Actions”) in addition to any and all matters initiated after the Petition Date as specified in Bankruptcy Rule 9027(a)(3) (the “Postpetition Actions,” and together with the Prepetition Actions, the “Actions”).

14. The Debtor further requests that the order approving this Motion be without prejudice to (a) any position the Debtor or any of its successors may take regarding whether

³ Pursuant to Local Rule 9006-2, this deadline shall automatically be extended until the Court acts on the Motion, without the necessity for the entry of a bridge order.

Bankruptcy Code section 362 applies to stay any given Action and (b) the right of the Debtor or any of its successors to seek further extensions of the period in which Actions may be removed pursuant to Bankruptcy Rule 9027.

BASIS FOR RELIEF

15. Section 1452 of title 28 of the United States Code and Bankruptcy Rule 9027 govern the removal of pending civil actions. Specifically, 28 U.S.C. § 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

16. Bankruptcy Rule 9027(a)(2) sets forth the time period for filing notices to remove claims or causes of actions and provides, in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

17. Bankruptcy Rule 9006(b)(1) further provides that the Court may extend unexpired time periods, such as the Debtor's Removal Deadline, without notice:

when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or 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 therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on

motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1).

18. The Court is authorized to grant the relief requested and extend the Removal Deadline. *See, e.g., Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984); *Caperton v. A.T. Massey Coal Co.*, 251 B.R. 322, 325 (S.D. W. Va. 2000) (Bankruptcy Rule 9006 authorizes the enlargement of time periods for removing actions under Bankruptcy Rule 9027); *In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (Bankruptcy Rule 9006 was designed to give bankruptcy judges the authority to enlarge the removal periods under Bankruptcy Rule 9027(a)); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (Bankruptcy Rule 9006 authorizes the court to grant extensions of time to file a notice of removal). Moreover, such relief routinely is granted by the Court without need for a hearing.

19. The Debtor may be a party to Prepetition Actions pending in various state or federal courts. The extension is appropriate because since the Petition Date the Debtor has been consumed not only with its transition into chapter 11, but with maximizing value for all creditors and stakeholders and planning its orderly winddown. The Debtor has also been significantly involved with the process of proposing and confirming the Plan.

20. More specifically, the extension is appropriate because the Debtor has expended considerable time and effort by:

- a. handling countless operational and winddown issues, including responding to creditor, member, and financial institution concerns and questions;
- b. compiling and processing data from the Alera Companies with regard to the Debtor's current and former members and developing a comprehensive database of outstanding claims;

- c. developing a budget and considering options to winddown this Chapter 11 Case and negotiating with various stakeholders in connection therewith; and
- d. developing, proposing and confirming the Plan.

21. At present, it is premature for the Debtor to make a determination as to the benefits and burdens relating to the removal of any Actions. Accordingly, the Debtor believes it is prudent to seek an extension of the Removal Deadline to protect its rights and the rights of any of its successors to remove any Actions. The Debtor submits that the relief requested herein is in the best interests of the Debtor, its estate, its creditors, and stakeholders. The extension sought will afford the Debtor and any of its successors the opportunity to make fully informed decisions with respect to the removal of any Action and will ensure that the Debtor and any of its successors do not forfeit valuable rights under 28 U.S.C. § 1452.

NOTICE AND NO PRIOR REQUEST

22. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Official Committee of Members; (c) all known litigation parties; and (d) all parties who have requested notice in this Chapter 11 Case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

23. No previous request for the relief sought in this Motion has been made to this Court or any other court.

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WHEREFORE, the Debtor respectfully requests that the Court enter an order: (i) granting the relief requested by the Motion and extending the Removal Deadline through and including April 4, 2022 and (ii) granting such other and further relief as is just and proper.

Dated: December 8, 2021
Wilmington, Delaware

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