

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

In re:

GULF COAST HEALTH CARE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11336 (KBO)

(Jointly Administered)

RE: D.I. 9 and 11

**BME LANDLORDS' LIMITED OBJECTION TO DEBTORS'
WAGES MOTION AND TAXES MOTION AND REQUEST FOR ADJOURNMENT**

The BME Landlords² by and through their undersigned counsel, hereby file this Limited Objection (the “Objection”) to (1) final relief pursuant to the *Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Pay Prepetition Wages, Compensation, and Employee Benefits, (II) Continue Certain Employee Benefit Programs in the Ordinary Course, and (III) Granting Related Relief* (ECF No. 9) (the “Wages Motion”); and (2) final relief pursuant to the *Motion of Debtors for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees* (ECF No. 11) (the “Taxes Motion”), and in support hereof, respectfully state as follows:

1. The Debtors and the Omega Landlords had their succession-lessee arrangements negotiated and agreed to on the Petition Date. Those comprehensive restructuring negotiations took place over several months unbeknownst to the BME Landlords. Certain aspects of that

¹ The last four digits of Gulf Coast Health Care, LLC’s federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC’s corporate headquarters and the Debtors’ service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

² BME Gulf Coast LLC; 1108 Church Street MS LLC; 101 Cobblestone Trace GA LLC; 3401 Main Street MS LLC; and 191 Highway 511 East MS LLC (together, the “BME Landlords”).

restructuring plan place a substantial and inequitable burden on the BME Landlords. As a result, the BME Landlords file this Objection and request for adjournment of certain motions.

2. A central feature of the resulting agreements is that the DIP Budget does not provide for the payment of post-petition rent. The non-payment of post-petition rent was an acceptable tradeoff for the Omega Landlords—particularly in light of the fact that the DIP encumbers previously unencumbered assets of the Blue Mountain Facilities, which appear to have value in excess of the operating burn of the Blue Mountain Facility Debtors by at least a couple months of rent. The Debtor and Omega seek to cram the BME Landlords onto an accelerated and potentially inequitable timeline to complete a transfer of their facilities. However, if the Blue Mountain Facilities are not transferred in accordance with the timeline the Debtor and Omega seek to dictate, then once the DIP is exhausted, the BME Landlords will need to potentially fund a DIP for future losses with the prospect of no collateral being available.

3. As this Court knows, the BME Landlords initially filed their *Preliminary Response to Debtors' First Day Pleadings* (ECF No. 40) (the “Preliminary Response”)³ on October 15, 2021, shortly after the Debtors entered into chapter 11. In their Preliminary Response, the BME Landlords identified that the Debtors' DIP Budget includes no payments to BME Landlords for post-petition rent. The BME Landlords also presented this issue to the Court at the hearing on October 15, 2021. As of this filing, there is still no agreement between the Debtors and the BME Landlords for the payment of the BME Landlords' post-petition rent, nor have they sought an extension of time to come current on those rent obligations. The BME Landlords continue to

³ Capitalized terms used but not otherwise defined herein will have the meaning ascribed to such terms in the Preliminary Response or in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (ECF No. 14) (the “DIP Motion”).

negotiate with the Debtors regarding concerns with the Debtors' DIP Budget, and hope that a resolution on the DIP Budget will be met. However, while these concerns remain pending, the BME Landlords must object to the Debtors' Wages Motion and Taxes Motion and request that those motions be adjourned until such time as an acceptable resolution is reached on payment of post-petition administrative rent.⁴

4. The Debtors have still not demonstrated whether they will pay accrued and unpaid post-petition rent. The Debtors are obligated, pursuant to section 365 of the Bankruptcy Code, to pay those required rent payments as an administrative expense. *See* 11 U.S.C. § 365(d)(3) ("The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title..."). The Debtors have not sought relief for cause to postpone the required rent payments for the first 60 days of the chapter 11 cases pursuant to section 365.⁵ As matters stand, the BME Landlords have no reason to believe that they will be paid their post-petition rent pursuant to section 365, nor that the Debtors will ensure post-petition rent is paid in full on the Effective Date of the Debtors' plan. *See* 11 U.S.C. § 1129(a)(9)(A).

5. Meanwhile, the Debtors have moved under their Wages Motion and Taxes Motion to pay prepetition amounts that are typically paid on the date that the Debtors' plan becomes

⁴ The Debtors and the BME Landlords agreed to an extension of the deadlines for the BME Landlords to submit objections to the DIP Motion and the *Motion of Debtors for Entry of Order Approving Assumption of Restructuring Support Agreement* (ECF No. 107) (the "RSA Motion"). If the Debtors and the BME Landlords are unable to reach a solution in regard to the BME Landlords' unpaid rent, the DIP Motion and RSA Motion, as well as the Wages and Taxes Motions, will each present a continued impediment to a successful resolution of the BME Landlords' issues.

⁵ Although the Debtors propose rent can be paid from the Debtors' two month remaining security deposit with the BME Landlords, according to applicable law the security deposit must be applied to any prepetition rejection damages claim, not accrued administrative claims. *See In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197, 208 (3d Cir. 2003) ("Once the § 502(b)(6) calculation is complete, the prevailing view, and the view adopted by the Bankruptcy Court here, favors deduction of a security deposit from the § 502(b)(6) cap of a landlord's claim).

effective (the “Effective Date”). Pursuant to the Wages Motion, the Debtors seek authority to pay more than \$16 million in prepetition obligations to their employees and Employment Agencies (as defined in the Wages Motion) (together, the “Wage Obligations”), the latter of which are arguably pre-petition general unsecured claims. *See* Wages Motion at 30. Under the Taxes Motion, the Debtors seek authority to pay about \$2.4 million in prepetition taxes (the “Tax Obligations”). *See* Taxes Motion at 4. A breakdown of the Wage Obligations and Tax Obligations, as well as prepetition amounts being paid under other first day pleadings, is attached hereto as **Exhibit A**.

6. The BME Landlords’ post-petition rent constitutes second-priority administrative expenses. *See* 11 U.S.C. §§ 503(b), 507(a)(2). The Debtors’ Wage Obligations are fourth- and fifth-priority unsecured claims, *see* §§ 507(a)(4), (5), and the Debtors’ Tax Obligations are eighth-priority unsecured claims. *See* § 507(a)(8). The Bankruptcy Code already requires that the Debtors pay the Wage Obligations and Tax Obligations following the Effective Date of their chapter 11 plan. *See* 11 U.S.C. §§ 1129(a)(9)(A), (B). But the Debtors have moved to pay those obligations in the early days of these cases with the Debtors’ DIP proceeds.

7. Not only will the Wages and Taxes Obligations be paid before the BME Landlords’ administrative claims are (if indeed those administrative claims are paid at all), but those obligations will be paid pursuant to a DIP financing that grants liens on all of the Debtors’ assets, including unencumbered assets, effectively pushing the BME Landlords further down the priority pole.

8. Indeed, under the DIP, the Blue Mountain Facility Debtors are granting liens on accounts receivable to cover operating losses at those facilities, effectively oversecuring the DIP Lender with respect to the Blue Mountain Facility Debtors. The Debtors’ decision to pay these particular claims at this stage, without any commitment to timely pay the BME Landlords’ post-

petition rent as required by the Bankruptcy Code, is inherently inequitable and should be denied or adjourned until a resolution on the BME Landlords' post-petition rent has been reached.

9. Although the BME Landlords object to the Wages Motion, they recognize the tremendous importance of paying the Wage Obligations in order to retain the Debtors' employees and make sure they are compensated for their work. The continued service of these employees is vital to maintain the safety of the residents located at each of the Omega Facilities and the Blue Mountain Facilities, as well as to preserve the value of the Debtors' assets. The BME Landlords understand that a failure to pay the Wage Obligations as soon as possible could cause the Debtors to lose those employees and Agency Workers (as defined in the Wages Motion). The BME Landlords have no issue in principle with the Wage Obligations being paid prior to the Effective Date of the Debtors' plan. However, the Debtors have provided no bona fide reason to leave the post-petition rent unpaid when it is their obligation to do so. The BME Landlords must object to the Wages Motion so long as post-petition rent remains unpaid and request a short adjournment of the Wages Motion to evaluate the payments to Employment Agencies (which appear to be pre-petition general unsecured claims) that compromise a substantial amount.

10. In regard to the Taxes Motion, there is no facially clear reason, and the Debtors have not provided any reason, to pay Tax Obligations ahead of the BME Landlords' post-petition rent. The Bankruptcy Code clearly provides that the Debtors' Plan shall provide for payment in full of those taxes. *See* 11 U.S.C. § 1229(a)(9)(C) (a debtor's chapter 11 plan must provide for payment in full of a claim under section 507(a)(8)). The risks inherent in not paying employees do not exist here. There is no reason the Debtors should pay prepetition taxes ahead of the BME Landlords' higher-priority post-petition rent claims when the Debtors are *required* to pay those rent claims but have not done so.

11. In short, the Debtors have indicated in their Wages Motion and Taxes Motion that they are cherry-picking administrative expense claims (and apparently other general unsecured claims) to pay now, while leaving higher-priority administrative expense claims to be satisfied later, if at all. There is a very real risk that the Debtors are administratively insolvent because they have not demonstrated that they will pay the BME Landlords' post-petition rent at all. Unless and until the Debtors have demonstrated that they are not administratively insolvent and that they will be able to pay post-petition rent for the Blue Mountain Facilities, the BME Landlords must object to the relief in the Wages Motion and Taxes Motion. It is the hope that the parties will continue to explore a consensual resolution of these issues. A short adjournment of these motions will potentially provide the parties with additional time to reach an accord on the payment of post-petition rent.

RESERVATION OF RIGHTS

12. The BME Landlords reserve all rights to supplement and/or amend this Objection prior to or at any hearing thereon, in the event the BME Landlords' objections raised herein are not resolved or in the event that any further changes to the Final Wages Order or the Final Taxes Order are proposed; or to further address the Wages Motion, the Taxes Motion, the other first day motions, and any other ancillary issues. In addition, nothing set forth in this Objection, or in any resolution(s) with respect to such Objection, should be deemed a waiver of any objections or arguments that the BME Landlords may have with respect to the DIP Motion or RSA Motion, as the BME Landlords and the Debtors have agreed to an extension of the BME Landlords' time to raise such objections and arguments and all rights of the BME Landlords are expressly reserved.

CONCLUSION

WHEREFORE, the BME Landlords respectfully request that the Court deny the Wages Motion and Taxes Motion unless the Debtors are able to establish full payment of post-petition rent to the BME Landlords, and grant other and further relief as is just and proper.

[Signature Page to Follow]

Dated: November 8, 2021
Wilmington, Delaware

/s/ Ricardo Palacio

ASHBY & GEDDES, P.A.

Ricardo Palacio (DE Bar No. 3765)
500 Delaware Avenue; 8th Floor
Wilmington, DE 19801
Tel: (302) 654-1888
Fax: (302) 654-2067
Email: Rpalacio@ashbygeddes.com

-and-

ARENT FOX LLP

George P. Angelich (admitted *pro hac vice*)
Beth M. Brownstein (*pro hac vice* forthcoming)
Brett D. Goodman (admitted *pro hac vice*)
1301 Avenue of the Americas
Floor 42
New York, NY 10019
Tel: (212) 484-3900
Fax: (212) 484-3990
Email: george.angelich@arentfox.com
Email: beth.brownstein@arentfox.com
Email: brett.goodman@arentfox.com

Co-Counsel for the BME Landlords