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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
REGIONAL CARE SERVICES CORP.,
Debtor.

Case No. 4:14-bk-01383-EWH

Chapter: 11

**Joinder In Motion To Approve Plan
Support Agreement**

Please take notice that Banner Health hereby joins in Debtors' Motion To Approve Plan Support Agreement [DE 27]. In support of its Joinder, Banner Health hereby files its Declaration.

Discussion

As this Court is aware, a debtor in possession has substantial discretion in its use, sale or lease of estate property under 11 U.S.C. § 363(b). Many courts agree in the context of bid protections that a reasonable breakup fee or expense reimbursement may be an appropriate exercise of a DIP's business judgment, depending on the facts of the case.¹ Ultimately, the court must determine "whether . . . in its discretion, . . . the proposed fee, and the transaction as a whole, make economic sense and are in the best interest of the bankruptcy estate and its creditors."²

¹ See *In re ASARCO, L.L.C.*, 650 F.3d 593, 601-03 (5th Cir. 2011); *In re Integrated Resources, Inc.*, 147 B.R. 650, 657 (S.D.N.Y. 1992); but see *In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010) (applying § 503(b) and determining "whether an award of a break-up fee was necessary to preserve the value of the Debtors' estate"); *In re Tama Beef Packing, Inc.*, 321 B.R. 496 (8th Cir. BAP 2005) (approving expense reimbursement under § 503(b)).

² *In re Wintz Companies*, 230 B.R. 840, 846-47 (8th Cir. BAP 1999), citing *In re America West Airlines, Inc.*, 166 B.R. 908, 912-13 (Bankr. D. Ariz. 1994).

1 For these reasons, Banner Health demonstrates, through its Declaration, the factual
2 basis explaining why Banner requested and Debtors agreed to a 3% breakup fee and
3 expense reimbursement here. To summarize, Banner's offer was a package: Banner would
4 finance the Debtor on an unsecured basis before and after the bankruptcy filing; agree to
5 purchase Debtors' assets under an Asset Purchase Agreement; and required the bid
6 protections in the Plan Support Agreement as part of its offer, which should result in
7 confirmation of a consensual plan of reorganization. The bid protections, including the
8 breakup fee, are an integral and essential part of Debtors' inducement to Banner to commit
9 to bear the time, expense, financing and risk of the financing and Asset Purchase
10 Agreement.

11 The United States Trustee argues that Debtors' proposed sale pursuant to a plan
12 does not provide for the possibility of competing bidders, so that Banner's request for a
13 breakup fee is a waste of estate money. In fact, the Plan Support Agreement does
14 recognize the possibility of a Competing Proposal and the possibility that Debtors might
15 breach or reject the Asset Purchase Agreement and proceed with an alternative
16 transaction. Promising to compensate Banner in that event via the breakup fee, and
17 thereby obtaining Banner's agreement to provide unsecured financing and enter into the
18 Asset Purchase Agreement, is hardly a waste of estate assets.

19 Accordingly, Banner Health requests that the Plan Support Agreement be approved.
20 Dated February 26, 2014.

21 **LEWIS ROCA ROTHGERBER LLP**

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23 By /s/ Robert M. Charles, Jr.

24 Robert M. Charles, Jr.

25 Susan M. Freeman

26 Attorneys for Banner Health
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CERTIFICATE OF SERVICE

I certify that on February 26, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following:

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