

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

In re:

MEDLY HEALTH INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-11257 (KBO)

(Jointly Administered)

Re: Docket Nos. 15 and 312

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

On December 9, 2022, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Motion of the Debtors for Entry of Orders: (I)(A) Approving Bidding Procedures of the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Enter Into the Stalking Horse Agreement and to Provide Bid Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving the Assumption and Assignment Procedures and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief, [Docket No. 15] (the “Sale/Bidding Procedures Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).*

The Sale/Bidding Procedures Motion seeks entry of an order (a) approving Bidding Procedures² for the sale (the “Sale”) of substantially all of the Debtors’ Pharmaca business and certain other assets (collectively, the “Acquired Assets”), (b) approving procedures for the potential assumption and assignment of executory contracts and unexpired leases (collectively, the “Potential Assumed Contracts”), (c) scheduling a potential auction for the sale of the Acquired Assets (the “Auction”), and (d) granting related relief. The Sale/Bidding Procedures Motion also

¹ The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Medly Health Inc. (3391); Care Well Pharmacy, Inc. (9048); Grubbs Care Pharmacy NW Inc. (0490); Marg Pharmacy, Inc. (5838); Medly Atlanta Inc. (7312); Medly Baltimore Inc. (2354); Medly Bedford Ave Pharmacy Inc. (3690); Medly Bristol Inc. (4556); Medly Bronx Inc. (4741); Medly Chicago Inc. (5231); Medly Dallas Inc. (7581); Medly DC Inc. (9403); Medly Enterprise LLC (8898); Medly Grand Central Inc. (1741); Medly Houston Inc. (7443); Medly Jersey City Inc. (5677); Medly Mail Service Pharmacy LLC (9203); Medly Miami Inc. (8101); Medly Orlando Inc. (7581); Medly Pharmacy Inc. (4606); Medly Pharmacy PA Inc. (8494); Medly Pittsburgh Inc. (8381); Medly Queens Inc. (9623); Medly Raleigh Inc. (5140); Medly San Antonio Inc. (9973); Medly Stamford Inc. (4966); Medly Tampa Inc. (5128); Medly UHC Pharmacy Inc. (6672); Medly Utah Inc. (4648); Pharmaca Integrative Pharmacy, Inc. (0334); Tango340B LLC (4781); West Campbell Pharmacy Inc. (2931); Khora Health Solutions Inc. (2909); and RPH Innovations LLC (3767). The Debtors’ business address is 7088 Winchester Circle, Suite 100, Boulder CO 80301.

² A capitalized term used but not defined herein shall have the meaning ascribed to it in the Bidding Procedures and Bidding Procedures Order, as applicable.

requested (i) the scheduling of a hearing to consider the Sale (the “Sale Hearing”); and (ii) entry of an order (the “Sale Order”) (a) authorizing the Sale of the Acquired Assets free and clear of all liens, claims, encumbrances, and interests to the either the Stalking Horse Bidder, or to such other party submitting the highest or otherwise best bid for the Acquired Assets (the “Successful Bidder”), (b) authorizing the assumption and assignment of the Potential Assumed Contracts, and (c) granting certain related relief.

The Debtors and MedPharmaca Holdings, Inc. (the “Stalking Horse Bidder”) have entered into that certain *Asset Purchase Agreement* dated December 9, 2022, as amended by that certain Amendment to Asset Purchase Agreement dated as of January 18, 2023 (the “Stalking Horse Agreement”), pursuant to which the Debtors agreed to sell substantially all of the Acquired Assets to the Stalking Horse Bidder free and clear of all liens, claims, encumbrances, and interests, subject to higher or better bids for the Acquired Assets to be determined at the Auction.

I. Parties Interested in Submitting a Bid

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid, and any party interested in making an offer to purchase all or certain of the Acquired Assets must comply with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

Any party interested in bidding on the Acquired Assets should contact, as soon as possible:

(1) (a) Richard Willis, Medly Pharmacy, 7088 Winchester Circle, Suite 100, Boulder CO 80301 (richard.willis@medly.com); and (b) Dave Janowicz, Medly Pharmacy, 2580 55th Street, Suite 100, Boulder, CO 80301 (dave.janowicz@medly.com);

(2) counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones, (ljones@pszjlaw.com); and

(3) Rock Creek, 1738 Belmar Blvd Belmar, NJ 07719, James Gansman (jgansman@rockcreekfa.com), 201-315-2521, and Brian Ayers (BAyers@rockcreekfa.com), 732-672-5746.

To receive copies of the (i) Sale/Bidding Procedures Motion, including any exhibits thereto, and/or a confidentiality agreement to become a Potential Bidder (as defined below), or (ii) a copy of the form asset purchase agreement or the Stalking Horse Agreement, as applicable, kindly submit a request by email to: counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, Attention: Laura Davis Jones (ljones@pszjlaw.com) or, alternatively, you may download such documents at <https://dm.epiq11.com/MedlyHealth>, by emailing the Debtors’ claims agent at MedlyInfo@epiqglobal.com, or by telephoning the claims agent toll free at: (855) 849-7178 or at (503) 564-1931 for non-US calls.

II. Bidding Procedures and Auction

On January 18, 2023, the Court entered the *Order (I) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of Debtors' Assets, (II) Scheduling Bid Deadlines and the Auction, (III) Approving Form and Manner of Notice Thereof, and (IV) Granted Related Relief*, [Docket No. 312] (the "Bidding Procedures Order"), approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.

The Bidding Procedures Order also approved payment of the Break-Up Fee and Expense Reimbursement potentially payable to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse Agreement, as modified by the Bidding Procedures Order.

The Bidding Procedures Order also establishes the following deadlines:

1. **Bid Deadline.** The deadline to submit a Qualified Bid is **January 31, 2023 at 5:00 p.m. (prevailing Eastern Time)**.
2. **Auction.** In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid of the Stalking Horse Bidder and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Acquired Assets. The Auction, if one is held, will commence on **February 3, 2023 at 10:00 a.m. (prevailing Eastern Time)** the offices of Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (or by videoconference to the live proceedings at this location (or by videoconference to the live proceedings at this location provided that if the Debtors' provide a videoconference to such live proceedings, they will indicate when the Auction goes on the record and shall, upon request, provide a videoconference link to those parties participating in the Auction via videoconference). The Debtors shall provide notice of the date, time, and place of the Auction to the Qualified Bidders no later than one (1) day before such Auction, and will post notice of the date, time, and place of the Auction no later than one business day before such Auction on the website of the Debtors' notice and claims agent, <https://dm.epiq11.com/MedlyHealth>. The Auction shall be only open to (i) Qualified Bidders, (ii) the Consultation Parties, and (iii) the members of the Committee, and each of their respective legal and financial advisors, *provided however* that any party who wishes to physically attend the Auction other than aforementioned parties and such other parties the Debtors deem appropriate, shall be required to provide at least five (5) days' notice prior to the Auction by sending an email to counsel to the Debtors.
3. **Auction Objection and Sale Objection Deadlines.** The deadline to file an objection with the Court to the Sale Order, the Stalking Horse Bidder, or the Sale with the Stalking Horse Bidder (collectively, the "Sale Objections") is **January 31, 2023 at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). If the Auction is held, the deadline to file

an objection with the Court to the conduct of the Auction, the Successful Bidder, or the Sale to the Successful Bidder (collectively, the “Auction Objections”) is at the Sale Hearing (the “Auction Objection Deadline”).

III. Sale Hearing and Closing

A hearing (the “Sale Hearing”) to approve and authorize the Sale to the Successful Bidder will be held before the Court on or before **February 7, 2023 at 10:30 a.m. (prevailing Eastern Time)** or such other date as determined by the Court. The Sale Hearing is being held to approve the highest or otherwise best offer received for the Acquired Assets. The Sale Hearing may be adjourned or rescheduled with prior notice filed on the docket of the Chapter 11 Cases or without prior notice by an announcement of the adjourned date at the Sale Hearing or on the Court’s docket.

IV. Filing Objections

Sale Objections and Auction Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **the Sale Objection Deadline or Auction Objection Deadline**, as applicable, and (d) be served on (i) counsel for the Debtors, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: Laura Davis Jones; (ii) proposed counsel to the statutory committee appointed in the Chapter 11 Cases, Porzio, Bromberg & Newman P.C., (i) 100 Southgate Parkway, P.O. Box 1997, Morristown, NJ 07962, Attn: Warren J. Martin, Jr., Robert M. Schechter, and Kelly D. Curtin (WJMartin@pbnlaw.com, RMSchechter@pbnlaw.com, and KDCurtin@pbnlaw.com) and (ii) 300 Delaware Avenue, Suite 1220, Wilmington, DE 19801, Attn: Cheryl A. Santaniello (casantaniello@pbnlaw.com); (iii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Linda Casey; (iv) counsel to Silicon Valley Bank; Morrison & Foerster LLP, 200 Clarendon Street, Floor 21 Boston, MA 02116 Attn: Alexander G. Rheume (ARheume@mofo.com) and 250 West 55th Street, Floor 20 New York, NY 10019 Attn: Seth J. Kleinman & Miranda Russell (SKleinman@mofo.com and MRussell@mofo.com); (v) counsel to the Prepetition TPC Lenders and the DIP Lenders: McDermott Will & Emery LLP, 2049 Century Park E., Suite 3800, Los Angeles, CA 90067, Attn: Gary B. Rosenbaum (grosenbaum@mwe.com) and One Vanderbilt Ave., New York, NY 10017, Attn: Darren Azman (dazman@mwe.com) and Riley Orloff (rorloff@mwe.com); (vi) counsel to Stalking Horse Bidder: McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, IL 60654, Attn: Marc Carmel (mcarmel@mcdonaldhopkins.com); and (vii) any other party that has requested notice pursuant to Bankruptcy Rule 2002. Auction Objections must also be served on counsel for the Successful Bidder.

V. Consequences of Failing to Timely Assert an Objection

Any party who fails to make a timely Sale Objection on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order and this Notice (i) shall be forever barred from asserting any Sale Objection, including, without limitation, with respect to the transfer of the Acquired Assets free and clear of all liens, claims, encumbrances and interests; and (ii) shall be deemed a consent to the Sale to the Stalking Horse Bidder or Successful Bidder,

as applicable, and the other relief requested in the Sale Motion.

Any party who fails to make a timely Auction Objection on or before the Auction Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Auction Objection, including, without limitation with respect to the transfer of the Acquired Assets free and clear of all liens, claims, encumbrances and interests.

VI. No Successor Liability

The Sale will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale. Accordingly, as a result of the Sale, the Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Successful Bidder will have no liability, except as expressly provided in the Successful Bidder's asset purchase agreement, for any liens, claims, encumbrances and interests against or in any of the Debtors under any theory of law, including, without limitation, successor liability theories.

Dated: January 18, 2023
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

Laura Davis Jones (DE Bar No. 2436)
David M. Bertenthal (CA Bar No. 167624)
Timothy P. Cairns (DE Bar No. 4228)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
dbertenthal@pszjlaw.com
tcairns@pszjlaw.com

Counsel for the Debtors and Debtors-in-Possession