

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re: Chapter 11 Cases
DELPHI BEHAVIORAL HEALTH Case No. 23-10945-PDR
GROUP, LLC, *et al.*,¹
Debtors. (Jointly Administered)

**DEBTORS' EXPEDITED OMNIBUS MOTION TO REJECT
EXECUTORY CONTRACTS, EFFECTIVE AS OF MARCH 28, 2023**

(Expedited Hearing Requested)

The Debtors respectfully request an expedited hearing on this Motion on March 30, 2023 at 2 p.m. when the Court is set to consider approval of the Disclosure Statement for Debtors' Amended Joint Plan of Liquidation

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, pursuant to 11 U.S.C. § 365(a) and Bankruptcy Rule 6006, file this motion (the "Motion") seeking the entry of an order approving the Debtors' rejection of certain executory contracts listed on **Exhibit "A"**, effective as of March 28, 2023.

In support of the Motion, the Debtors state as follows:

¹ The address of the Debtors is 1901 West Cypress Creek Road, Suite 500, Fort Lauderdale, FL 33309. The last four digits of the Debtors' federal tax identification numbers are: (i) Delphi Behavioral Health Group, LLC (2076), (ii) 61 Brown Street Holdings, LLC (0007), (iii) Aloft Recovery LLC (6674), (iv) Banyan Recovery Institute, LLC (6998), (v) Breakthrough Living Recovery Community, LLC (5966), (vi) California Addiction Treatment Center LLC (7655), (vii) California Vistas Addiction Treatment LLC (8272), (viii) DBHG Holding Company, LLC (6574), (ix) Defining Moment Recovery Community, LLC (3532), (x) Delphi Health BuyerCo, LLC (2325), (xi) Delphi Health Group, LLC (0570), (xii) Delphi Intermediate HealthCo, LLC (6378), (xiii) Delphi Management LLC (6474), (xiv) Desert View Recovery Community, LLC (7437), (xv) DR Parent, LLC (2700), (xvi) DR Sub, LLC (8183), (xvii) Las Olas Recovery LLC (9082), (xviii) Maryland House Detox, LLC (1626), (xix) New Perspectives, LLC (0508), (xx) Next Step Housing LLC (6975), (xxi) Ocean Breeze Detox, LLC (7019), (xxii) Ocean Breeze Recovery, LLC (9621), (xxiii) Onward Living Recovery Community, LLC (4735), (xxiv) Palm Beach Recovery, LLC (4459), (xxv) Peak Health NJ, LLC (7286), (xxvi) QBR Diagnostics, LLC (7835), (xxvii) Rogers Learning, LLC (1699), (xxviii) SBH Haverhill, LLC (0971), (xxix) SBH Union IOP LLC (4139), (xxx) Summit at Florham Park, LLC (8226), (xxxii) Summit Behavioral Health Limited Liability Company (3337), (xxxiii) Summit Health BuyerCo, LLC (2762), (xxxiiii) Summit IOP Limited (4567), and (xxxiv) Union Fresh Start LLC (6841).

I. Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are 11 U.S.C. § 365(a) and Bankruptcy Rule 6006.

II. Background

4. On February 6, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code.
5. The Debtors are operating their business and managing their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
6. For a detailed description of the Debtors and their operations, the Debtors respectfully refer the Court and parties in interest to the *Declaration of Edward A. Phillips in Support of Chapter 11 Petitions and First Day Filings* [ECF No. 9] (the "First Day Declaration").

III. Relief Requested and Basis Therefor

7. By way of this Motion, the Debtors seek authority, pursuant to section 365(a) of the Bankruptcy Code, to reject the Management Services Agreements and Qualified Service Organization/Business Associate Agreements with TruPath Holdings, LLC ("TruPath") that are listed on Exhibit "A" (collectively, the "Contracts"), effective as of March 28, 2023.
8. The Debtors have determined in their business judgment that, given recent developments in the Debtors' marketing efforts, the Contracts have become unnecessary to the administration of these bankruptcy cases and will be burdensome to the estates after approval of

the sale of substantially all of their assets, the hearing for which is set for March 28, 2023. Specifically, the assets of the operating Debtors will be sold to the Stalking Horse Bidder, and the operation of such facilities in New Jersey and Massachusetts will be uninterrupted and continue to operate in the ordinary course of business with no material effect to patient care until the closing of the Sale such that the services rendered by TruPath under the Contracts are no longer necessary. Therefore, maintaining the Contracts from and after March 28, 2023, would impose unnecessary costs and burdens on the Debtors' estates with no commensurate benefit and, rather, the Debtors seek to save the estates from incurring administrative expenses under the Contracts from and after March 29, 2023.

9. Section 365(a) of the Bankruptcy Code allows a debtor, subject to approval of the bankruptcy court, to assume or reject any unexpired lease. *See Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996); *In re TOUSA, Inc.*, No. 14-12067, 2015 WL 1346098, at *5 n. 3 (11th Cir. Mar. 26, 2015) (in dicta). ““This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.”” *Stewart Title*, 83 F.3d at 741 (quoting *In re Murexco Petrol., Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)). A debtor's decision to assume or reject an unexpired lease is subject to the “business judgment” test. *Byrd v. Gardiner, Inc. (In re Gardinier, Inc.)*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); *In re Surfside Resort and Suites, Inc.*, 325 B.R. 465, 469 (Bankr. M.D. Fla. 2005); *see also In re Chira*, 567 F.3d 1307, 1312 (11th Cir. 2009) (describing the business judgment test as “narrow”). The sole inquiry is whether assumption or rejection will benefit the estate. *See id.*

10. In applying the “business judgment” test, courts show great deference to a debtor's decision to assume or reject an unexpired lease. *See In re Colony Beach & Tennis Club*

Ass'n, Inc., No. 8:09-cv-535-T-33, 2010 WL 746708, at *3 (M.D. Fla. Mar. 2, 2010) (“A court may not substitute its judgment for that of a debtor unless the debtor’s decision that ‘rejection will be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, whim, or caprice.’”) (quoting *Surfside Resort and Suites*, 325 B.R. at 469) (internal citations omitted); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of debtor’s decision to assume or reject an unexpired lease “should be granted as a matter of course”). As long as the decision to assume or reject is a reasonable exercise of business judgment, courts should approve the assumption or rejection of an unexpired lease. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Group of Institutional Investors v. Chicago M. St. P. & P. R. R. Co.*, 318 U.S. 523 (1943).

11. Because the Debtors will not benefit from continued performance under the Contracts, as the ultimate purchaser of substantially all of the Debtors’ assets will no longer need TruPath’s services after approval of the sale, rejection of the Contracts as of March 28, 2023, is in the best interests of the estates because it will avoid the accrual of administrative expenses. Accordingly, it necessarily follows that rejection of the Contracts as of March 28, 2023, is a decision made in the sound exercise of the Debtors’ business judgment; that is, a decision that will benefit the Debtors’ estates.

WHEREFORE, the Debtors respectfully request entry of an Order in the form attached hereto as **Exhibit “B”** (i) approving the rejection of the Contracts effective as of March 28,

2023, and (ii) granting such other relief as is just and proper.

Dated: March 28, 2023

Respectfully submitted,

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Debtors-in-Possession*
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EXHIBIT "A"
(Rejected Contracts)

Debtor	Name and Address of Party to Contract	Description of Contract
SBH Haverhill, LLC, d/b/a Serenity at Summit New England	TruPath Holdings, LLC c/o Buttaci Leardi & Werner LLC 212 Carnegie Center, Suite 202 Princeton, NJ 08540 Attention: Paul Werner, Esq.	Management Services Agreement dated January 10, 2023
SBH Haverhill, LLC, d/b/a Serenity at Summit New England	TruPath Holdings, LLC c/o Buttaci Leardi & Werner LLC 212 Carnegie Center, Suite 202 Princeton, NJ 08540 Attention: Paul Werner, Esq.	Qualified Service Organization/Business Associate Agreement dated January 10, 2023 <u>With a copy to:</u> The Law Offices of James G. Dodrill II, P.A. 5800 Hamilton Way Boca Raton, FL 33496 Attn: Jim Dodrill Email: jim@jimdodrill.com
Union Fresh Start LLC d/b/a Serenity at Summit; SBH Union IOP, LLC, d/b/a Summit Behavioral Health; Summit at Florham Park, LLC, d/b/a Summit Behavioral Health ² ; and Summit Behavioral Health Limited Liability Company d/b/a Summit Behavioral Health Princeton Junction	TruPath Holdings, LLC c/o Buttaci Leardi & Werner LLC 212 Carnegie Center, Suite 202 Princeton, NJ 08540 Attention: Paul Werner, Esq.	Management Services Agreement dated January 10, 2023

² SBH Union IOP, LLC d/b/a Summit Behavioral Health and Summit at Florham Park, LLC, d/b/a Summit Behavioral Health ceased operations on February 28, 2023.

<p>Union Fresh Start LLC d/b/a Serenity at Summit; Summit at Florham Park, LLC, d/b/a Summit Behavioral Health³; SBH Union IOP, LLC, d/b/a Summit Behavioral Health Union; and Summit Behavioral Health Limited Liability Company d/b/a Summit Behavioral Health Princeton Junction</p>	<p>TruPath Holdings, LLC c/o Buttaci Leardi & Werner LLC 212 Carnegie Center, Suite 202 Princeton, NJ 08540 Attention: Paul Werner, Esq.</p> <p><u>With a copy to:</u> The Law Offices of James G. Dodrill II. P.A. 5800 Hamilton Way Boca Raton, FL 33496 Attn: Jim Dodrill Email: jim@jimdodrill.com</p>	<p>Qualified Service Organization/Business Associate Agreement dated January 10, 2023</p>
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³ SBH Union IOP, LLC d/b/a Summit Behavioral Health and Summit at Florham Park, LLC, d/b/a Summit Behavioral Health ceased operations on February 28, 2023.

EXHIBIT "B"
(Proposed Order)

UNITED STATE BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re:

Chapter 11 Cases

DELPHI BEHAVIORAL HEALTH
GROUP, LLC, *et al.*,⁴

Case No. 23-10945-PDR

Debtors.

(Jointly Administered)

**ORDER GRANTING DEBTORS' EXPEDITED OMNIBUS MOTION TO REJECT
EXECUTORY CONTRACTS, EFFECTIVE AS OF MARCH 28, 2023**

⁴ The address of the Debtors is 1901 West Cypress Creek Road, Suite 500, Fort Lauderdale, FL 33309. The last four digits of the Debtors' federal tax identification numbers are: (i) Delphi Behavioral Health Group, LLC (2076), (ii) 61 Brown Street Holdings, LLC (0007), (iii) Aloft Recovery LLC (6674), (iv) Banyan Recovery Institute, LLC (6998), (v) Breakthrough Living Recovery Community, LLC (5966), (vi) California Addiction Treatment Center LLC (7655), (vii) California Vistas Addiction Treatment LLC (8272), (viii) DBHG Holding Company, LLC (6574), (ix) Defining Moment Recovery Community, LLC (3532), (x) Delphi Health BuyerCo, LLC (2325), (xi) Delphi Health Group, LLC (0570), (xii) Delphi Intermediate HealthCo, LLC (6378), (xiii) Delphi Management LLC (6474), (xiv) Desert View Recovery Community, LLC (7437), (xv) DR Parent, LLC (2700), (xvi) DR Sub, LLC (8183), (xvii) Las Olas Recovery LLC (9082), (xviii) Maryland House Detox, LLC (1626), (xix) New Perspectives, LLC (0508), (xx) Next Step Housing LLC (6975), (xxi) Ocean Breeze Detox, LLC (7019), (xxii) Ocean Breeze Recovery, LLC (9621), (xxiii) Onward Living Recovery Community, LLC (4735), (xxiv) Palm Beach Recovery, LLC (4459), (xxv) Peak Health NJ, LLC (7286), (xxvi) QBR Diagnostics, LLC (7835), (xxvii) Rogers Learning, LLC (1699), (xxviii) SBH Haverhill, LLC (0971), (xxix) SBH Union IOP LLC (4139), (xxx) Summit at Florham Park, LLC (8226), (xxxii) Summit Behavioral Health Limited Liability Company (3337), (xxxiii) Summit Health BuyerCo, LLC (2762), (xxxiiii) Summit IOP Limited (4567), and (xxxiv) Union Fresh Start LLC (6841).

THIS MATTER having come before the Court for a hearing on March 30, 2023, at 2:00 p.m. in Fort Lauderdale, Florida upon the *Debtors' Expedited Omnibus Motion to Reject Executory Contracts, Effective as of March 28, 2023* [ECF No. ____] (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"). The Motion seeks authority to reject the Contracts⁵ identified on **Exhibit A** to the Motion, effective as of March 28, 2023. The Court has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors. Proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary. Upon review of the record before the Court, good and sufficient cause exists to grant the relief requested, as provided herein. Accordingly, based on the entire record of the hearing on the Motion, it is

ORDERED that:

1. The Motion is **GRANTED** as provided herein.
2. The Debtors' rejection of the Contracts will benefit the estates, and is a decision made well within the scope of the Debtors' business judgment.
3. The Debtors' rejection of the Contracts is **APPROVED** pursuant to 11 U.S.C. § 365(a), effective as of March 28, 2023.
4. **ANY PROOF OF CLAIM FOR DAMAGES ARISING FROM THE REJECTION MUST BE FILED WITH THE COURT ON OR BEFORE THE LATEST OF: (I) THE TIME FOR FILING A PROOF OF CLAIM PURSUANT TO BANKRUPTCY RULE 3003(c)(3); (II) 30 DAYS AFTER THE ENTRY OF THE ORDER**

⁵ All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

COMPELLING OR APPROVING THE REJECTION OF THE LEASE; OR (III) 30 DAYS AFTER THE EFFECTIVE DATE OF THE REJECTION OF THE LEASE.

5. The Court retains jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

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Submitted by:
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(Attorney Avron is directed to serve this order upon all non-registered users who have yet to appear electronically in this case and file a conforming certificate of service.)