

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	Chapter 11 Case
	)	
WELLPATH HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 24-90533 (ARP)
	)	
Debtors.	)	(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF COBB COUNTY,  
GEORGIA, AND COBB COUNTY SHERIFF TO PROPOSED SALE OF ASSETS AND  
PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACT**

TO THE HONORABLE ALFREDO R. PÉREZ,  
UNITED STATES BANKRUPTCY JUDGE:

Cobb County, Georgia, and the Cobb County Sheriff, including the employees thereof (collectively, the “County”) file this Limited Objection and Reservation of Rights to the Debtors’ proposed sale of assets and proposed assumption and assignment of an executory contract between the County and Wellpath, LLC (“Wellpath”), a debtor and debtor-in-possession in these chapter 11 cases. In support of this Limited Objection, the County would respectfully show the Court as follows:

**BACKGROUND**

**The Medical Care Agreement**

1. The County and Wellpath are parties to an *Agreement for Inmate Medical Care at the Cobb County Adult Detention Center* (as amended and renewed, the “Medical Care Agreement”) dated as of April 23, 2020.<sup>2</sup> The Medical Care Agreement has been

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Wellpath>. The Debtors’ service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

<sup>2</sup> The Agreement was executed by Neil Warren in his official capacity as then-Sheriff of

renewed annually so as to remain in effect through 2021, 2022, 2023, and 2024. The Medical Care Agreement is scheduled to terminate by its own terms on December 31, 2024. The County and Wellpath are actively pursuing an extension of the Medical Care Agreement to begin on January 1, 2025.

2. Pursuant to the Medical Care Agreement, Wellpath contracted to provide medical services at the Cobb County Adult Detention Center (the “CCADC”), including medical treatment, staffing, supplies and pharmaceuticals to inmates at the on-site infirmary at the CCADC. In November 2021, the parties amended the Medical Care Agreement to add comprehensive mental health services to the scope of services provided by Wellpath.

### **The Chapter 11 Cases**

3. On November 11, 2024, the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in this Court.

4. On November 12, 2024, the Debtors filed the *Debtors’ Emergency Motion for Entry of Orders (I)(A) Approving the Bidding Procedures for the Sale of the Debtors’ Assets, (B) Approving Entry into a Stalking Horse Purchase Agreement for the Recovery Solutions Assets, (C) Authorizing the Recovery Solutions Expense Reimbursement, (D) Authorizing Potential Selection of Stalking Horse Bidders for the Correction Assets and Approving Related Corrections Asset(s) Bid Protections, (E) Establishing Related Dates and Deadlines, (F) Approving the Form and Manner of Notice Thereof, and (G) Approving the Assumption and Assignment Procedures, (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances (B) Authorizing the Assumption and*

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Cobb County, Georgia. The Amendments were executed by Craig Owens in his official capacity as current Sheriff of Cobb County, Georgia (the “Sheriff”).

*Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 21] (the “Sale Motion”).

5. Pursuant to the Sale Motion, the Debtors (a) sought entry of an order approving, *inter alia*, the Bid Procedures<sup>3</sup> and the Assumption and Assignment Procedures in connection with one or more sales of the Debtors’ assets; and (b) sought entry of an order approving and authorizing entry into a Stalking Horse Purchase Agreement (the “APA”) for the Recovery Solutions Assets to sell or otherwise transfer all or substantially all of the Recovery Solutions Assets to a Stalking Horse Bidder, and, if approved, the Corrections Asset(s) via a Consolidated Asset Sale, or a separate Corrections Asset(s) Sale Transaction.

6. On November 19, 2024, the Court entered the *Order (I) Approving the Bidding Procedures for the Sale of the Debtors’ Assets, (II) Approving Entry into a Stalking Horse Purchase Agreement for the Recovery Solutions Assets, (III) Authorizing the Recovery Solutions Expense Reimbursement, (IV) Authorizing Potential Selection of Stalking Horse Bidders for the Corrections Assets and Approving Related Corrections Asset(s) Bid Protections, (V) Establishing Related Dates and Deadlines, (VI) Approving the Form and Manner of Notice Thereof, (VII) Approving the Assumption and Assignment Procedures, and (VIII) Granting Related Relief* [Docket No. 111] (the “Bid Procedures Order”), approving, *inter alia*, the Bidding Procedures, the APA, and the Corrections Asset(s) Bid Protections, and the Assumption and Assignment Procedures.

7. On November 27, 2024, the Debtors filed the *Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount* [Docket No.

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<sup>3</sup> Capitalized terms used in this Limited Objection but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

194] (the “Cure Notice”). Attached to the Cure Notice was a schedule of executory contracts that the Debtors intend to assume and assign to the Successful Bidder. For each line on the schedule, the Debtors showed an estimated cure amount, stating the Debtors’ position on the amount (if any) to be cured as a condition to assuming the contract in question. See 11 U.S.C. § 365(b)(1)(A).

8. On December 11, 2024, the County filed the *Objection of Cobb County, Georgia and Cobb County Sheriff to Proposed Cure Amount of Executory Contract* [Docket No. 399] (the “County’s Cure Objection”). In the County’s Cure Objection, the County objected to the stated cure amount with respect to the Medical Care Agreement, on the grounds that the purported cure amount failed to reflect Wellpath’s contractual obligation to indemnify the County from known, unknown, and/or future losses resulting from Wellpath’s performance of services under the Medical Care Agreement.

9. On December 11, 2024, the Court entered the *Stipulated and Agreed Amended Order (I) Approving the Bidding Procedures for the Sale of the Debtors’ Assets, (II) Approving Entry into a Stalking Horse Purchase Agreement for the Recovery Solutions Assets, (III) Authorizing the Recovery Solutions Expense Reimbursement, (IV) Authorizing Potential Selection of Stalking Horse Bidders for the Corrections Assets and Approving Related Corrections Asset(s) Bid Protections, (V) Establishing Related Dates and Deadlines, (VI) Approving the Form and Manner of Notice Thereof, (VII) Approving the Assumption and Assignment Procedures, and (VIII) Granting Related Relief* [Docket No. 384] (the “Amended Bid Procedures Order”). In the Amended Bid Procedures Order, the Court, *inter alia*, established new deadlines in connection with the proposed sale of the Debtors’ assets, including filing an objection to the proposed cure amount for an executory contract that may be assumed and assigned (December 21, 2024) and filing an objection to the proposed sale on any other grounds (December 26, 2024). (Amended Bid Procedures Order p. 17.)

### **LIMITED OBJECTION**

10. In accordance with the Amended Bid Procedures Order, the County hereby asserts this Limited Objection to the Recovery Solutions / Consolidated Sale Transaction, including a specific objection to the proposed assumption and assignment of the Medical Care Agreement, on the following grounds.

#### **Cure Objection**

11. First, the County hereby incorporates and restates the County's Cure Objection. Until the Debtors can show that they can satisfy the cure prerequisite to assuming the Medical Care Agreement, see 11 U.S.C. § 365(b)(1)(A), they cannot assign the agreement. *Id.* § 365(f)(2)(A); *Bonneville Power Admin. v. Mirant Corp. (In re Mirant Corp.)*, 440 F.3d 238, 253 (5th Cir. 2006) ("[A]ssumption must precede assignment").

#### **Adequate Assurance of Future Performance**

12. Second, the Debtors have not given the Court any basis on which to conclude that the proposed assignee of the Medical Care Agreement can provide adequate assurance of future performance under the agreement. An executory contract cannot be assigned unless the debtor-in-possession makes such a showing. 11 U.S.C. § 365(f)(2)(B); *Anytime Fitness, L.L.C. v. Thornhill Bros. Fitness, L.L.C. (In re Thornhill Bros. Fitness, L.L.C.)*, 85 F.4th 321, 325 (5th Cir. 2023). The law demands adequate assurance of future performance "whether or not there has been a default in such contract." 11 U.S.C. § 365(f)(2)(B).

13. The Sale Motion contemplates that an entity called RS Purchaser LLC ("RS Purchaser") will serve as the stalking horse for the proposed sale of the Debtors' assets and that, subject to the acceptance of a higher and better offer, the identified assets will be sold to RS Purchaser pursuant to the APA. Apart from the fact that RS Purchaser is a Delaware limited liability company, neither the Sale Motion nor the APA provides any substantive

information about the entity. Accordingly, the County cannot assess whether RS Purchaser has the wherewithal to perform Wellpath's obligations under the Medical Care Agreement, including the amendment to provide comprehensive mental health services, or to meet the financial obligations required therein. The Debtors have not provided even the most basic and relevant information, such as the entity's capitalization, human capacity, and experience in providing health care to incarcerated persons. The County therefore objects and insists on strict proof that RS Purchaser (or the Successful Bidder(s), if not RS Purchaser) can provide adequate assurance of future performance under the Medical Care Agreement. Even upon such a showing, the County reserves its right to oppose assumption and assignment of the Medical Care Agreement.

#### **RESERVATION OF RIGHTS**

14. The County respectfully reserves the right to amend or supplement this Limited Objection and Reservation of Rights as necessary or appropriate.

#### **CONCLUSION**

WHEREFORE, the County hereby submits this Limited Objection and Reservation of Rights and requests all such relief to which the County may be justly entitled.

Dated: December 23, 2024

Respectfully submitted,

/s/ Jeff P. Prostok

Jeff P. Prostok

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ATTORNEYS FOR COBB COUNTY,  
GEORGIA AND THE COBB COUNTY  
SHERIFF

**CERTIFICATE OF CONFERENCE**

I hereby certify that, on December 20, 2024, I conferred with counsel for the Debtors regarding the subject matter of this Objection. I was advised that the Debtors do not agree with the position expressed in this Objection at this time.

/s/ Jeff P. Prostok

Jeff P. Prostok

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served via the Court's ECF system to all parties authorized to receive electronic notice in this case on this 23rd day of December, 2024.

/s/ Jeff P. Prostok

Jeff P. Prostok