

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CareFocus Corporation,

Debtor.

Case No. BKY 17-32654

Chapter 11

CareFocus Corporation,

Plaintiff,

ADV. No. _____

-vs.-

U.S. Department of the Treasury,
Bureau of the Fiscal Service,
And
U.S. Department of Health &
Human Services, Centers for Medicare
& Medicaid Services,

Defendants.

VERIFIED COMPLAINT

CareFocus Corporation, as Debtor and Debtor in Possession, (“Plaintiff” or “Debtor”) by and through its undersigned legal counsel, Steven B. Nosek, P.A., as and for its cause of action against U.S. Department of the Treasury, Bureau of the Fiscal Service, (the “U.S. Treasury”) and U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (“Medicare”) (jointly “Defendants”) states and alleges as follows:

PARTIES

1. Debtor filed for protection under Chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of

Minnesota (this “Court”) on August 18, 2017 (the “Petition Date”), commencing the above-referenced bankruptcy case (the “Bankruptcy Case”). The Bankruptcy Case is currently pending before this Court.

2. Defendant U.S. Treasury is a United States governmental agency with its principal offices located in Birmingham, AL 35283.

3. Defendant U.S. Department of Health & Human Services is a United States governmental agency with its principal offices located at Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

4. Defendant Centers for Medicare & Medicaid Services is a United States governmental agency with its principal offices located at 7500 Security Blvd., Baltimore, MD 21244-1850.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 547, 550, and 551. This Court has the authority to grant the relief requested herein. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Bankruptcy Rules 7001 *et. seq.* govern this proceeding.

6. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

7. The Debtor filed a Chapter 11 Bankruptcy in 2010, BKY No.: 10-30828. The United States Bankruptcy Court for the District of Minnesota confirmed the Debtor’s Second Amended Plan of Reorganization on January 26, 2011. A copy of the Order and Notice Confirming Second Amended Plan and Fixing Time Limits is attached as **Exhibit A**.

8. The Debtor filed a Chapter 11 Bankruptcy in 2013, BKY No.: 13-32591. The United States Bankruptcy Court for the District of Minnesota confirmed the Debtor's Plan of Reorganization on December 4, 2013. A copy of the Order and Notice Approving Disclosure Statement, Confirming Plan and Fixing Time Limits is attached as **Exhibit B**.

9. The Debtor received a letter from the U.S. Department of the Treasury dated May 16, 2017 stating that the Debtor had been overpaid by Medicare in the amount of \$158,504.98.

10. On or about June 6, 2017, the U.S. Treasury commenced applying payments that were due to the Debtor from the Department of Veterans Affairs for current services to an alleged delinquent debt.

11. Based on information and belief, the alleged delinquent debt owed to Medicare is the result of an audit conducted by Medicare approximately fifteen to sixteen years ago.

12. Between June 6, 2017 and the Petition Date, the U.S. Treasury took all the funds the Debtor was entitled to receive from the Department of Veterans Affairs for a total of \$107,993.22 and applied the funds to the alleged delinquent debt.

13. The Debtor did not approve or authorized applying the \$107,993.22 to the alleged delinquent debt.

14. A portion of the sums referenced herein were taken by the U.S. Treasury subsequent to the Petition Date of the Bankruptcy case and in violation of 11 U.S.C. §362.

COUNT I – PREFERENTIAL TRANSFERS

11 U.S.C. §§ 547, 550, 551 and 1107

15. The Debtor realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

16. On or within 90 days before the Petition Date, the U.S. Treasury transferred interests of the Debtor's property to itself, for its benefit, including but not limited to \$104,508.58 of accounts receivable due from the Department of Veterans Affairs (whether one or more, collectively the "Preferential Transfers").

17. The Preferential Transfers were made for or on account of one or more alleged antecedent debts owed by the Debtor to Medicare before such Preferential Transfers were made, and were made while the Debtor was insolvent.

18. Plaintiff has the authority and duty to prosecute and collect all avoidance and preferential transfers.

19. The Preferential Transfers are avoidable pursuant to 11 U.S.C. § 547, because the Preferential Transfers enabled the U.S. Treasury to receive more than it would have received if the Preferential Transfers had not been made and had the U.S. Treasury received payment of said debt to the extent provided under the provisions of Title 11 of the United States Code.

20. Plaintiff is entitled to avoid the Preferential Transfers pursuant to 11 U.S.C. § 547 for the benefit of the bankruptcy estate pursuant to 11 U.S.C. § 551, and recover the Preferential Transfers from Defendants pursuant to 11 U.S.C. § 550.

21. As a result of the forgoing, the Debtor is entitled to judgment pursuant to Bankruptcy Code §§ 547(b), 550(a), 551 and 1107: (a) avoiding and preserving the Preferential Transfers free and clear from any claimed interest of the Defendants, (b) directing that the Preferential Transfers be set aside, (c) recovering such Preferential Transfers or the value thereof from the U.S. Treasury for the benefit of the bankruptcy estate of the Debtor, and (c) recovering attorneys' fees from the U.S. Treasury.

COUNT II – DISALLOWANCE

11 U.S.C. § 502(b) and (d)

22. The Debtor realleges and incorporates by reference the preceding paragraphs of the Complaint as if fully set forth herein.

23. The actions of the Defendants are contrary to the provisions of 11 U.S. C. §524 and U.S.C. §1141. The actions of the Defendants are barred by applicable Federal Statutes of Limitation.

24. To the extent that the Defendants assert they are entitled to any claim in this Bankruptcy Case, such claim is unenforceable against the Debtor or the property of the Debtor under any agreement or applicable law and should be disallowed under 11 U.S.C. § 502(b).

25. Per 11 U.S.C. § 502 (d), the Court should disallow any claim of Defendants to Debtor's bankruptcy estate unless and until Defendants pay the amount of the Preferential Transfer to Plaintiff.

26. As a result of the foregoing, to the extent that the Defendants assert they are entitled to any claim in this Bankruptcy Case, all such claims are and should be in all things disallowed.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in favor of Plaintiff and against the Defendants as follows:

- A. On Count I – Preferential Transfer, pursuant to 11 U.S.C. §§ 547, 550, 551 and 1107: (a) avoiding and preserving the Preferential Transfer free and clear from any claimed interest of the Defendants, (b) directing that the Preferential Transfer be set aside, (c) recovering such Preferential Transfer or the value thereof from the Defendants for the benefit of the bankruptcy estate, and (d)

recovering attorneys' fees from the Defendants;

- B. On Count II – Disallowance, pursuant to 11 U.S.C. §502(b) and (d): declaring and ordering that, to the extent that the Defendants assert they are entitled to any claim in this Bankruptcy Case, all such claims are in all things disallowed;
- C. Awarding Plaintiff all applicable interest (including prejudgment and post-judgment interest), attorneys' fees, costs and disbursements in this action; and;
- D. Granting Plaintiff such other, further and different relief as the Court deems just, proper and equitable.

STEVEN B. NOSEK, P.A.

Dated: October 3, 2017.

/e/ Steven B. Nosek
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ATTORNEYS FOR PLAINTIFF

VERIFICATION

I, Adewale Koleosho, Chief Executive Officer of the Debtor named in the foregoing pleading, declare under penalty of perjury that the foregoing pleading is true and correct according to the best of my knowledge, information and belief.

Dated: 10-3, 2017.



Adewale Koleosho, Chief Executive Officer

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CAREFOCUS CORPORATION,

Debtor.

CHAPTER 11 CASE

BKY 10-30828

ORDER AND NOTICE CONFIRMING SECOND AMENDED PLAN AND FIXING TIME LIMITS

The Second Amended Chapter 11 Plan of Reorganization filed by Debtor, its proponent, was transmitted to all creditors and other parties in interest. It has now been determined, after hearing on notice, that the requirements for confirmation set forth in 11 U.S.C § 1129 have been satisfied.

IT IS THEREFORE ORDERED:

1. CONFIRMATION OF PLAN. The Second Amended Chapter 11 Plan of Reorganization filed by CareFocus Corporation, the Debtor, on January 20, 2011, and dated January 20, 2011, is confirmed.
2. PROFESSIONAL FEES AND OTHER ADMINISTRATIVE EXPENSES. All applications for award of compensation or expenses to a trustee, examiner, attorney or other professional person, and all other requests to order payment of an administrative expense, shall be made by motion under Local Rules 2016-1 or 3002-2, and shall be served and filed within 30 days after the date of this order.
3. OBJECTIONS TO CLAIMS. All objections to proofs of claim shall be made by motion under Local Rule 3007-1, and shall be served and filed within 30 days after the date of this order, or 30 days after the claim was filed, whichever is later.
4. OTHER PROCEEDINGS. All other motions, applications or complaints shall be filed within 60 days after the date of this order. Any time limit provided in this order may be extended or waived by the court for cause after notice and a hearing. Nothing in this order shall preclude any proceeding in another court with jurisdiction and within time limits otherwise applicable.
5. CLERK'S CHARGES AND REPORT INFORMATION. A separate order is entered to require payment of notice or claim charges and the reporting of payments made post petition to date of confirmation of the plan, and payments paid or to be paid thereafter, for pre-confirmation debts or administrative expenses.
6. MAILING OF NOTICE. The clerk shall forthwith mail copies of this order, as notice of entry of this order and confirmation of the plan, to the entities specified in Local Rules 9013-3 and to all creditors and other parties in interest. The proponent of the plan shall forthwith mail copies of this order as notice thereof to all equity security holders of the debtor.

Dated: January 26, 2011.

/e/ Gregory F. Kishel

GREGORY F. KISHEL
UNITED STATES BANKRUPTCY JUDGE

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 01/26/2011 Lori Vosejпка, Clerk, By JRB, Deputy Clerk
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ESHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

CareFocus Corporation

CHAPTER 11 CASE

Debtor.

BKY 13-32591

ORDER AND NOTICE APPROVING DISCLOSURE STATEMENT, CONFIRMING PLAN AND FIXING
TIME LIMITS

A proposed disclosure statement dated October 22, 2013, regarding a plan dated October 22, 2013, was filed by CareFocus Corporation, proponent, on October 23, 2013. The court must approve a disclosure statement as containing adequate information under 11U.S.C. § 1125 before a plan and disclosure statement may be mailed to the creditors.

The plan filed by CareFocus Corporation, its proponent, was transmitted to all creditors and other parties in interest. It has now been determined, after hearing on notice, that the requirements for confirmation set forth in 11 U.S.C §1129 have been satisfied.

IT IS THEREFORE ORDERED:

1. APPROVAL OF DISCLOSURE STATEMENT. The disclosure statement filed by CareFocus Corporation, its proponent, on October 23, 2013, dated October 22, 2013, regarding the plan filed by the proponent on October 23, 2013, dated October 22, 2013, is approved.
2. CONFIRMATION OF PLAN. The plan filed by CareFocus Corporation, on November 26, 2013, dated November 26, 2013, is confirmed.
3. PROFESSIONAL FEES AND OTHER ADMINISTRATIVE EXPENSES. All applications for award of compensation or expenses to a trustee, examiner, attorney or other professional person, and all other requests to order payment of an administrative expense, shall be made by motion under Local Rules 2016-1 or 3002-2, and shall be served and filed within 30 days after the date of this order.
4. OBJECTIONS TO CLAIMS. All objections to proofs of claim shall be made by motion under Local Rule 3007-1, and shall be served and filed within 30 days after the date of this order, or 30 days after the claim was filed, whichever is later.
5. OTHER PROCEEDINGS. All other motions, applications or complaints shall be filed within 60 days after the date of this order. Any time limit provided in this order may be extended or waived by the court for cause after notice and a hearing. Nothing in this order shall preclude any proceeding in another court with jurisdiction and within time limits otherwise applicable.
6. CLERK'S CHARGES AND REPORT INFORMATION. A separate order is entered to require payment of notice or claim charges and the reporting of payments made postpetition to date of confirmation of the plan, and payments paid or to be paid thereafter, for preconfirmation debts or administrative expenses.
7. MAILING OF NOTICE. The clerk shall provide notice of entry of this order and confirmation of the plan to the entities specified in Local Rule 9013-3 and to all creditors and other parties in interest. The proponent of the plan shall provide notice of this order as notice thereof to all equity security holders of the debtor.

Dated: December 4, 2013

/e/ Kathleen H. Sanberg

KATHLEEN H. SANBERG
UNITED STATES BANKRUPTCY JUDGE

NOTICE OF ELECTRONIC ENTRY AND
FILING ORDER OR JUDGMENT
Filed and Docket Entry made on 12/04/2013
Lori Vosejka, Clerk, by LH

ESHIBIT B