

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

IN RE: }  
ALPHA NURSING & THERAPY, LLC } CASE NO. 17-50668  
 } CHAPTER 11  
Debtor }

DISCLOSURE  
STATEMENT Dated:  
June 22, 2017

I.

INTRODUCTION

1.1 Background: On March 24, 2017, Alpha Nursing & Therapy, LLC., the Debtor-in-Possession ("Debtor") in these proceedings, filed their Voluntary Petition under Chapter 11 of the Bankruptcy Code ("the Code") in the United States Bankruptcy Court, Western District of Texas, San Antonio Division. The Debtor has operated their business as Debtor-in- Possession since the date of the filing of the Petition.

On the same date as this filing, the Debtor filed their Plan of Reorganization (the "Plan") pursuant to Section 1125 of the Code. The Debtor believes more will be realized by the creditors and other parties in interest under the Plan than the creditors and other parties in interest would realize if the assets of the Debtor were liquidated in a Chapter 7 proceeding. The Debtor has prepared this Disclosure Statement to provide adequate information about the Debtor and their business to the holders of claims and other parties in interest against the Debtor so that each holder or party in interest may make an informed judgment about the merits of the Plan.

1.2 Purpose of Disclosure Statement: The Debtor has prepared and filed this Disclosure Statement for the Court's approval and for submission to the holders of claims with respect to the Debtor and their assets. The purpose of this Statement is to provide the holders of claims against the Debtor with adequate information about the Debtor and their business to make an informed judgment about the merits of approving or disapproving the Plan. YOU ARE URGED TO CAREFULLY READ THIS DISCLOSURE STATEMENT, TOGETHER WITH ITS ATTACHED EXHIBITS, WHICH HAVE BEEN PREPARED IN ORDER TO PROVIDE YOU WITH ADEQUATE INFORMATION TO ENABLE YOU TO DECIDE WHETHER TO ACCEPT OR REJECT THE PLAN. NO REPRESENTATION CONCERNING THE DEBTOR, THEIR BUSINESS OPERATION, THE VALUE OF THEIR PROPERTY, OR THE VALUE OF ANY BENEFITS OFFERED TO HOLDERS OF CLAIMS OR OTHER PARTIES IN

INTEREST IN CONNECTION WITH THE PLAN ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE ACCEPTANCE OF THE PLAN WHICH ARE CONTRARY TO INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION AND SUCH REPRESENTATION OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR DEBTOR, WHO SHALL DELIVER SUCH INFORMATION TO THE COURT.

1.3 Court Approval: The approval of this Disclosure Statement by the Court is required by Section 1125 of the Code and does not constitute a judgment by the Court as to the desirability of the Plan, or as to the value or suitability of any consideration offered thereby. The purpose of the examination of the Disclosure Statement by the Court is to determine whether it contains adequate information.

## II.

### GENERAL INFORMATION

#### A. DEFINITIONS

The following terms when used in this Disclosure Statement have the following meanings:

2.1 Administrative Expenses: Claims and expenses of the type described in the Plan which are allowed and ordered paid by the Court pursuant to Section 507(a)(1) of the Code.

2.2 Bar Date: A Bar Date may be established which will apply to Claims arising out of the rejected executory contracts and leases or to deficiency claims arising out of the abandonment or foreclosure of collateral to or by previously secured creditors. Otherwise the bar date for filing a claim in this case is 7/24/2017.

2.3 Chapter 11: Chapter 11 of the Bankruptcy Code. References to section numbers are references to sections in the Bankruptcy Code (the Code) unless otherwise specified.

2.4 Claim: A timely filed Claim which is allowed and ordered paid by the Court. Pursuant to Section 1111(a) of the Code, all claims listed by the Debtor in their Schedules, as amended, as undisputed, liquidated, and not contingent, are deemed filed.

2.5 Confirmation: Entry by the Court of a final and nonappealable Order confirming the Plan at or after a hearing pursuant to section 1128 of the Code.

2.6 Court: The United States Bankruptcy Court for the Western District of Texas, San Antonio Division, including the United States Bankruptcy Judge presiding in the Chapter 11 case of the Debtor.

2.7 Debtor: Alpha Nursing & Therapy, LLC.

2.8 Disbursing Agent: The Disbursing Agent shall be Alpha Nursing & Therapy, LLC, 7272 Wurzbach #302, San Antonio, Texas 78240

2.9 Effective Date: Thirty (30) days after the order confirming the plan is a final, nonappealable order.

2.10 Filing Date: March 24<sup>th</sup>, 2017, the Debtor filed a petition for relief under Chapter 11 of Title 11, United States Bankruptcy Code.

2.11 Modifications to Plan: The Plan may be modified upon application of the Debtor, or corrected prior to Confirmation, without notice or hearing, and without an additional disclosure statement pursuant to Section 1125 of the Code, provided that the Court finds that such modification does not materially or adversely affect any creditor or class of creditors.

2.12 Priority Claim: Any Claim entitled to priority under Section 507 of the Code.

2.13 Secured Creditors: All creditors other than taxing entities who hold a lien, security interest or other encumbrance which has been properly perfected as required by law with respect to property owned by the Debtor.

2.14 Tax Claim: Any Claim entitled to priority pursuant to Section 507(a)(7) of the Code.

2.15 Under secured Creditors: All creditors of the Debtor holding unsecured claims as a result of the value of the property on which the creditor has a lien is less than the amount of the creditor's allowed claim.

2.16 Unsecured Personal Injury Creditors: All creditors of the Debtor holding unsecured claims arising out of personal injury tort and property damage.

2.17 Unsecured Creditors: All creditors of the Debtor holding claims of unsecured debts, unsecured liabilities, unsecured demands or unsecured claims of any character whatsoever, except for holders of under secured claims and personal injury tort claims.

## B. VOTING

2.18 Requirements of Voting: A creditor, in order to vote on the Plan, must have filed a Proof of Claim with the court prior to the Bar Date unless that creditor was scheduled by the Debtor as not disputed, liquidated, and not contingent. Any creditor scheduled as not disputed, liquidated, and not contingent is, to the extent scheduled, deemed to have filed a claim pursuant to Section 1111(a) of the Code and, absent objection, such claim is deemed allowed.

2.19 Time and Manner of Voting: Voting may be on the ballot which is provided along with this Disclosure Statement or in any other written manner. The ballot should be sent to:

Johnny W. Thomas  
1153 E.  
Commerce  
St. Paul  
Square  
San Antonio, Texas  
78205

2.20 Mailing: Mail or deliver your ballot so that it will reach that address before the deadline. A vote received after that time may not be counted.

2.21 Parties Bound: Whether a creditor votes on the Plan or not, such creditor will be bound by the terms and treatment set forth in the Plan, if the Plan is accepted by the requisite majorities of classes of creditors and/or is confirmed by the Court. Absent some affirmative act constituting a vote, such creditor will not be included in the tally. Allowance of a claim for voting purposes does not necessarily mean that all or a portion of the claim will be allowed for distribution purposes.

2.22 Ballots: You are urged to fill in, date, sign, and promptly mail the enclosed ballot which was furnished you. Be sure to properly complete the form and legibly identify the name of the claimant.

2.23 Solicitations: The Debtor, or others, may solicit your vote. The cost of any solicitation by the Debtor will be borne by the Debtor.

2.24 Representations: No representations concerning the Debtor or the Plan are authorized by the Debtor other than as set forth in this Disclosure Statement. Any representations or inducements made by any person to secure your vote which are other than those contained herein should not be relied upon, and such representations or inducements should be reported to counsel for the Debtor who shall deliver such information to the Court.

2.25 Hearing on Plan Confirmation: The Court will hold a hearing to determine whether or not the Plan should be confirmed in Courtroom No. 1,

United States Bankruptcy Court, 615 E. Houston St., Courtroom #3, San Antonio, Texas. You may attend that hearing and present to the court your arguments in favor of or in opposition to the Confirmation of the Plan.

2.26 Requirements for Confirmation: As a creditor, your vote is important. The Plan can be confirmed by the Court if it is accepted by the holders of two-thirds (2/3) in amount and more than one-half (1/2) in number of claims voting on the Plan in each class. In the event the requisite acceptances are not obtained, the Court may nevertheless confirm the Plan if the Court finds that the Plan accords fair and equitable treatment to the classes rejecting it.

### C. REPRESENTATIONS AND ACCURACY

2.27 No Representations Other Than That Contained Herein: No representations concerning the Debtor (particularly as to their future business operations or the value of their property) are authorized by the Debtor other than what is set forth in this Disclosure Statement. The Debtor maintains records internally. For the foregoing reasons, and due to the complexity of the Debtor's financial matters, the Debtor is unable to warrant or represent that the information contained herein is without any inaccuracy, although great effort has been made to be accurate.

2.28 Materiality: The Debtor has prepared this Disclosure Statement to disclose information that, in the opinion of the Debtor, is material and important and necessary to an evaluation of the Plan. The material contained herein is intended solely for that purpose and solely for the use of creditors and other parties in interest of the Debtor and, accordingly, may not be relied upon for any purpose other than determination of how to vote on the Plan. In addition, the materials contained in this Disclosure Statement may not be sufficient for the formation of a judgment by any creditor of the preferability of an alternative to the Plan. The Debtor has proposed the Plan and favors it. Materials referring to alternatives to the Plan are limited by both partial considerations of space and opinions of the Debtor.

2.29 Additional Information: Certain materials contained in this Disclosure Statement are taken from other instruments or are a digest of other instruments. While the Debtor has made every effort to retain the meaning of the other instruments or portions transposed, the Debtor urges that any reliance on the contents of such other instrument should depend upon a complete review of the instruments themselves.

### HISTORY AND ORGANIZATION

3.1 Pre-Petition: The Debtor is managed by Mario Rodriguez and Marioli Rodriguez.

Alpha Nursing & Therapy, LLC

In 2007, Mario Rodriguez purchased the Agency.

From 2007 to 2015 the Agency's operations were as projected with steady growth in census and revenue as projected. The second quarter of 2015 Palmetto GBA and CMS began having internal issues in regard to the Agency's NPI number. This number is necessary for the agency to submit claims and receive payment from Palmetto GBA and CMS. Palmetto GBA and CMS had "dropped Agency's NPI from Crosswalk" meaning did not recognize our current NPI number and delayed payments to the business for two (2) weeks and sometimes three (3) months. The Agency was unable to assist Palmetto GBA and CMS in resolving this issue with our NPI number as it was internal with Palmetto GBA and CMS and was not a result of anything the Agency had done or not done. Every quarter, since the second quarter in 2015 Palmetto GBA and CMS have continued to repeat this error thus resulting delay in payments and to date the issue has no formal explanation nor a permanent solution. These occurrences in the delay of payments placed the Agency in severe financial uncertainty as the frequency and duration of nonpayment were and have been unpredictable. Although Palmetto GBA does have a short-term solution, referred to as an "Accelerated Payment" it only grants Agency with a 70% advance "Loan" on secured payments as provided by Agency and confirmed by Palmetto GBA, this also further impairs the Agency's financial situation. This has been granted to provider at least once a quarter and sometimes up to three times, depending on the time it takes for Palmetto GBA and CMS to resolve the issue. Each time the issue arises a delay of payment occurs and the Agency is prevented from generating any revenue. The Agency has always continued to provide patient care throughout the entire process, however, in early March 2017, a combination of this debilitating financial issue caused by Palmetto GBA and CMS, and a garnishment on the Agency's bank account with improper/no notice to the Agency, caused the Agency to file Chapter 11. During this same period, the Agency was attempting to expand outside of Bexar County, which caused additional expenses and stress on the Agency.

The Chapter 11 bankruptcy protection filing was made on March 24, 2017 in response to collection efforts by Rehabcare Group East, dba Rehabcare.

3.2 Remedial Measures: The Debtor has been able to control their operating overhead and expenses since the filing of the Chapter 11 proceeding.

The Debtor is also concentrating its marketing efforts, primarily in Bexar County as it continues to operate.

Since most expenses are fixed, excepting wages, the real key to improve profitability is increased referrals.

We are confident the Home Healthcare business in general is going in the right direction and that the future will be profitable.

**3.3 Present Financial Condition and Available Assets and Funding of Plan:**  
Information regarding the financial position of the Debtor and their possessions are included in Debtor's schedules filed in the case herein, the monthly reports filed by the Debtor and the Debtor's own valuation of their assets. NO STATEMENT OR REPRESENTATION CONCERNING THE DEBTOR, PARTICULARLY MATTERS CONCERNING FINANCIAL INFORMATION ABOUT THE DEBTOR, ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO CERTIFIED INDEPENDENT AUDIT OR VERIFICATION. ALL THE FINANCIAL INFORMATION WITH RESPECT TO THE DEBTOR AND THE CONTENTS OF THE PLAN HAVE BEEN COMPILED FROM INFORMATION TAKEN FROM THE MONTHLY REPORTS AND SCHEDULES OF THE DEBTOR. CREDITORS SHOULD READ THE PLAN IN FULL. CREDITORS ARE FURTHER URGED TO CONSULT LEGAL COUNSEL TO INSURE COMPLETE UNDERSTANDING OF THE PLAN AND THIS DISCLOSURE STATEMENT.

The funds for the payments to creditors under the Plan will be the future operating profits of the Debtor. The most recent monthly report filed during this proceeding is attached hereto as Exhibit "A".

Projections of income and expenses for the Debtor for the remainder of 2018, 2019 and 2020 are attached hereto as Exhibit "B". Revenues are expected to increase by 8% to 10% annually to \$1,000,000.00 in 2020.

**3.4 Management:** The Debtor will retain their current management under the Chapter 11 reorganization.

The present managers are Mario Rodriguez and Marioli Rodriguez. The salary presently paid is \$-0- and \$72,000.00 respectively.

#### IV.

### GENERAL OUTLINE OF THE PLAN WITH RESPECT TO SECURED AND UNSECURED CREDITORS

**4.1 Overview:** In this case, a Plan of Reorganization has been filed with the Bankruptcy Court. The following sets forth a summary of the Plan, along with such additional information as is deemed necessary to provide an understanding of the plan and its effects, if accepted by the creditors, and confirmed by the Court. It also clarifies the subsequent status of the Debtor as to management and control

of the continuing business affairs. The Plan is a proposed legal agreement between the Debtor, the creditors and other parties in interest which becomes binding upon confirmation.

4.2 Summary: The Plan provides for the division of the creditors into six (6) classes:

- The holder of the Class 1 claims will be paid on the balance of the allowed amount of their claim on or before its due date of January 1, 2018 at approximately \$117.27 or before the effective date of the plan. (Bexar County – Unimpaired)
- The holder of the Class 2 claims will be paid the allowed unsecured priority amount of their claim over 60 months, beginning 30 days after the effective date of the plan at \$211 per month. This claim is subject to objection by the debtor as it appears the claim applies to another entity.
- The holder of the claim in Class 3 shall be paid the allowed unsecured priority claim amount before the Effective Date of the Plan. These claims are unimpaired. (Exhibit A; and Texas Workforce Commission No. 11)
- The holder of Class 4 claims will be paid the allowed secured or unsecured priority amount of their claims over 120 months, beginning 30 days after the Effective Date of the Plan. Payments will continue monthly pursuant to prior orders of this Court. On the 30<sup>th</sup> day after the Effective Date of the Plan, the Debtor shall pay principle on the balance of approximately \$611,874.64 with payments at approximately \$5,100.00 per month for 120 months. (Internal Revenue Service)
- All claims in Class 5 will be paid 100% over the period of 60 months after confirmation of the Plan. (Texas Department of Aging and Disability;



American Dependable Therapy; Everbank, Laura Melenduez; Kinnser Software, In.; Remedy Therapy Staff, PLLC; Carol Perez, Fazzi; Forman Therpay, Irma Mountain, MMW; Palmetto GBA; Parks & Coffee; Public Storage; Ready Refresh; Rehabcare; Zirmed; Verizon)

- The holder of the Class 6 claim shall be paid only after the payment of all the above-mentioned claims.

V.

### GENERAL PROVISIONS

5.1 No Additional Charges: Except as expressly stated in the Plan, or as allowed by Court Order no interest, penalty, late charge, or additional charges (such as attorney's fees) shall be allowed on any claim subsequent to the filing date.

5.2 Minor Modifications: After Confirmation, the Debtor may, with the approval of the Court, and so long as it does not materially or adversely affect the interest of creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan in the Order of Confirmation in such manner as may be necessary to carry out the purposes and the effect of the Plan.

5.3 Exemption: Any satisfaction provided to any creditor pursuant to the Plan which may be deemed to be a security is exempt from registration under certain state and federal securities laws. Absent registration or another exemption, subsequent transfer of any such security is not so exempt.

5.4 Non-Waiver: Nothing in the Plan shall be deemed to waive, limit, or restrict in any way the discharge granted upon confirmation of the Plan in Section 1141 of the Code.

5.5 Revestment of Assets: On Confirmation the Debtor will be "conditionally revested" with their assets subject only to the terms of the Plan and to liens of the Secured Creditors described herein. The Debtor shall be entitled to manage their affairs without further Order of the Court. Subject to such limitation, the Court will retain jurisdiction of the Plan until it has been fully consummated. The assets shall revert to the Chapter 7 estate in the event the case is converted to a Chapter 7.

**5.6 *All creditors shall agree that so long as Debtor is in compliance with the confirmed Plan of Reorganization, no collection efforts shall be taken against the owners and principals of Debtor in their capacity as***

***maker, co-signer or guarantor on any indebtedness owed to creditors. Legal action against the principals will endanger the success of the Debtor plan as such principals will be attempting to manage the Debtor with reduced compensation initially, while in fact making payments on such debt, except as to Southwestern National Bank.***

5.7 Final Decree: Within (6) six months after confirmation of the plan, the Final Decree shall be issued and the case closed.

VI.

REVIEW OF THE  
PLAN

6.1 Copy of Plan: A copy of the Plan has been filed with the Bankruptcy Court of even date with this filing. The Plan is a proposed legal agreement between the Debtor, the creditors and other parties in interest which becomes binding upon Confirmation.

VII.

ALTERNATIVES TO THE PLAN  
AND CONSEQUENCES OF REJECTION

7.1 Alternatives: Although this Disclosure Statement is intended to provide information to assist in the formation of a judgment as to whether to vote for or against the Plan, and although creditors are not being offered through that vote an opportunity to express an opinion concerning alternatives to the Plan, a brief discussion of alternatives to the Plan may be useful. These alternatives include another plan, conversion to Chapter 7 liquidation bankruptcy, or dismissal of these proceedings. The Debtor, of course, believes the Plan to be in the best interest of the creditors, parties in interest, and the Debtor.

Under the proposed Plan of Reorganization, the Debtor will retain all the property remaining from that originally owned at the time of the filing of the bankruptcy petition. As detailed in the Plan, secured creditors will be paid the value of their collateral as of the effective date of the Plan, and unsecured creditors will be paid a percentage of the allowed amount of their claims in full and complete satisfaction of their respective claims against the Debtor, guarantors and sureties. The Debtor believes that the proposed Plan filed contemporaneously herein is the only realistic alternative available to the creditors of the estate. The Debtor believes through the implementation of the Plan, that creditors will realize the maximum return of their debt.

Should the proposed Plan not be accepted by the creditors of the estate, three different consequences are possible:

1. Another Plan: The only method, in Debtor's opinion, from which the unsecured creditors will receive a dividend, is through the implementation of this Plan. The Debtor believes that it will be able to fund the Plan of Reorganization out of future earnings of the Debtor. The Bankruptcy Court could allow additional time to the Debtor or creditors of the Debtor to formulate a different Plan under Chapter 11;

2. Chapter 7 Liquidation: The Debtor is firmly convinced that the Plan of Reorganization presents the only means by which all creditors can achieve greater than liquidation value of the company. In the event of liquidation, the Debtor believes that there will be no dividend to unsecured creditors. The major assets of Debtor are accounts, office equipment, and supplies.

3. Dismissal: The Bankruptcy Court could dismiss the proceedings. The dismissal of the Chapter 11 proceedings would result in the immediate demand for payment by Debtor's secured creditors. The Debtor would be unable to pay, as they were unable to pay prior to the filing of the Chapter 11, all of the demands of their creditors, and the Debtor would soon be forced into liquidation.

The most remote possibility is dismissal. If dismissal would occur, the Debtor would no longer have the protection of the Bankruptcy Court and relevant statutes. As a result of the dismissal, each creditor would be free to seek judgments against the Debtor, and in return, execute against substantially all the Debtor's property in satisfaction of the judgment. This would likely result in a race to the courthouse which would leave most of the creditors without any payment whatsoever on their claims.

As to the first alternative, the Debtor is unable to predict whether or not it would be given additional time to formulate a Plan. It is more probable, the Court would continue the Chapter 11 for a period of time, during which any party in interest would be allowed to propose a Plan. If additional time is not granted for additional Plans, or at the end of the time for additional Plans, a conversion to Chapter 7 is highly likely.

A straight bankruptcy proceeding, known as a Chapter 7 proceeding is a liquidation of a Debtor by a impartial trustee. In a Chapter 7 bankruptcy, the amount to be received by the unsecured creditors depends upon the net proceeds after all the assets of the Debtor is reduced to cash, and secured creditors and administrative priorities have been paid in full. A conversion to a Chapter 7 would have the effect of causing additional delays within the proceeding and cause the administrative expenses to increase. Conversion to a Chapter 7 creates an additional layer of priority claims such as the Trustee's fee. Additionally, a conversion to a Chapter 7 would in all likelihood result in the Trustee abandoning properties in which there is equity due to the inability and unwillingness of the Trustee to operate and manage the property. The end result would be the unsecured creditors would receive less than 100% of the allowed amount of their claims, even to the extent of receiving no money at all.

Attached hereto as Exhibit "C" is a liquidation analysis detailing the

