

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

In re:

CANO HEALTH, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10164 (KBO)

(Jointly Administered)

Ref. Docket Nos.: 864, 866, 1023, 1025,

**OBJECTION OF CD SUPPORT LLC TO THE NOTICE OF PROPOSED REJECTION
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO
DEBTORS' PROPOSED CHAPTER 11 PLAN OF REORGANIZATION**

CD Support LLC ("CDS"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Notice of Proposed Rejection of Executory Contracts and Unexpired Leases Pursuant to Debtors' Proposed Chapter 11 Plan of Reorganization* [D.I. 1025] (the "Rejection Notice") filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"). In support of this Objection, CDS respectfully submits as follows:

BACKGROUND

1. On February 4, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

2. On May 21, 2024, the Debtors filed the *Fourth Amended Joint Chapter 11 Plan or Reorganization of Cano Health, Inc. and its Affiliated Debtors* [D.I. 864] (including any exhibits

¹ The last four digits of Cano Health, Inc.'s tax identification number are 4224. A complete list of the Debtors in the Chapter 11 Cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.veritaglobal.net/CanoHealth>. The Debtors' mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.



and schedules thereto and as may have been modified, amended, or supplemented from time to time in accordance with the terms thereof, the “Plan”).

3. On May 21, 2024, the Bankruptcy Court entered the *Order (I) Approving Proposed Disclosure Statement and Form and Manner of Notice of Disclosure Statement Hearing, (II) Establishing Solicitation and Voting Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Proposed Plan, and (V) Granting Related Relief* [D.I. 865] (the “Disclosure Statement Order”) that, among other things, (a) approved the *Disclosure Statement for the Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and its Affiliated Debtors* [D.I. 866] and certain dates and deadlines related to confirmation of the Plan, (b) authorized the Debtors to solicit votes on the Plan, and (c) scheduled a hearing on confirmation of the Plan for June 28, 2024 at 9:30 a.m. (Prevailing Eastern Time), before the Honorable Karen B. Owens, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 6th Floor, Courtroom 3, Wilmington, DE 19801 (the “Confirmation Hearing”).

4. On June 14, 2024, the Debtors filed the *Notice of Filing of Plan Supplement in Connection with Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and its Affiliated Debtors* [D.I. 1023] (as may be amended, modified, or supplemented from time to time, the “Plan Supplement”)² including the Rejection Schedule at Exhibit D (the “Rejection Schedule”). On the same day, the Debtors filed the Rejection Notice, with a copy of the Rejection Schedule attached thereto as Exhibit A.

² Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Plan Supplement.

5. Two contracts between Cano Health, LLC (“Cano”) and Onsite Dental, LLC (“Onsite”)³ were included on the Rejection Schedule and in the Rejection Notice, as shown below:

Onsite Dental, LLC	Dental Services Administration Agreement	85 Argonaut, Suite 200, Aliso Viejo, CA 92656
Onsite Dental, LLC	Rights of First Offer Agreement	Attn Ernest Blackwelder, 85 Argonaut, Suite 200, Aliso Viejo, CA 92626

6. Based upon the information provided by the Debtors on the Rejection Schedule and in the Rejection Notice, it is our belief that the agreements listed are the (i) Dental Services Administration Agreement, by and between CDS and debtor Cano, effective as of April 13, 2022 (the “DSAA”) and (ii) Right of First Refusal Agreement, by and between CDS, Onsite, debtor Cano, and Excellent Dental, P.A, effective as of April 13, 2022.

7. On June 20, 2024, the Debtors further amended, modified and supplemented the Plan Supplement by filing the *Notice of Filing of First Supplement to Plan Supplement in Connection with Fourth Amended Joint Chapter 11 Plan of Reorganization of Cano Health, Inc. and its Affiliated Debtors* [D.I. 1063] (the “First Supplement”). The First Supplement did not remove either of the Onsite contracts from the Rejection Schedule.

8. Prior to the Petition Date, on August 30, 2023, Cano sent CDS a letter confirming the termination of the DSAA (the “Termination Letter”), attached hereto as **Exhibit A**. Pursuant to the Termination Letter, the DSAA was terminated on October 8, 2023—almost four months prior to the Petition Date.⁴

OBJECTION

9. Section 365(a) of the Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any . . . executory contract or unexpired lease of the debtor.”

³ CDS is a wholly owned subsidiary of Onsite.

⁴ Prior to the objection deadline, CDS, by and through counsel, contacted Debtors’ counsel to discuss the pre-petition termination of the DSAA. As of the date of filing, discussions remain ongoing and all parties are working diligently to resolve the dispute consensually without further involvement from the Court.

11 U.S.C. § 365(a) (emphasis added). The Bankruptcy Code does not define executory contract, but the Third Circuit has consistently held that “[a]n executory contract is a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” *Spyglass Media Grp., LLC v. Bruce Cohen Prods. (In re Weinstein Co. Holdings, LLC)*, 997 F.3d 497, 505 (3d Cir. 1995); *In re Exide Techs.*, 607 F.3d 957, 962 (3d Cir. 2010); *Enter. Energy Corp. v. United States (In re Columbia Gas Sys. Inc.)*, 50 F.3d 233, 238 (3d Cir. 1995); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989). “Unless both parties have unperformed obligations that would constitute a material breach if not performed, the contract is not executory under § 365.” *Spyglass Media Grp.*, 997 F. 3d at 505; *In re Exide Techs.*, 607 F.3d at 962; *In re Columbia Gas Sys. Inc.*, 50 F.3d at 238; *In re Foothills Tex., Inc. v. MTGLQ Investors, L.P. (In re Foothills Tex., Inc.)*, 476 B.R. 143, 151 (Bankr. D. Del. 2012); *In re Safety-Kleen Corp.*, 410 B.R. 164, 167 (Bankr. D. Del. 2009). A contract terminated pre-petition is no longer executory and section 365 of the Bankruptcy Code is not applicable. *ECB I, Inc. v. Am. Online, Inc. (In re EBC I, Inc.)*, 365 B.R. 631, 637 (Bankr. D. Del. 2006); *Counties Contracting & Constr. Co. v. Constitution Life Ins. Co.*, 855 F.2d 1054, 1061 (3d Cir. 1988) (concluding that “[a] contract may not be assumed under § 365 if it has already expired according to its terms.”)

10. Here, the DSAA was terminated well in advance of the Petition Date, by mutual agreement of Cano and CDS, as set forth in the Termination Letter. As such, the DSAA is not executory and cannot be rejected under section 365 of the Bankruptcy Code.

RELIEF REQUESTED

11. CDS respectfully requests that the Court deny the relief requested in the Debtors' Rejection Notice to the extent that the Debtors do not revise Exhibit A attached thereto to remove the DSAA.

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CONCLUSION

WHEREFORE, CDS respectfully requests that the Court (i) deny the Debtors' relief requested in the Rejection Notice, (ii) remove the DSAA from Exhibit A attached to the Rejection Notice, and (iii) grant such other and further relief as the Court deems just and proper.

Dated: June 25, 2024
Wilmington, DE

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Dennis A. Meloro (DE Bar. No. 4435)
222 Delaware Avenue, Suite 1600
Wilmington, Delaware 19801
Telephone: (302) 661-7395
Email: Dennis.Meloro@gtlaw.com

- and -

Oscar N. Pinkas (admitted *pro hac vice*)
One Vanderbilt Avenue
New York, New York 10017
Tel: (212) 801-9200
Email: PinkasO@gtlaw.com

Counsel to CD Support LLC

Exhibit A

Termination Letter



August 30, 2023

VIA FEDERAL EXPRESS AND E-MAIL

Ernest Blackwelder
Chief Executive Officer
CD Support LLC
85 Argonaut, Suite 220
Aliso Viejo, CA 92656

Re: Dental Services Administration Agreement Termination

Dear Mr. Blackwelder:

I write in connection with Onsite Dental LLC (“Onsite”) and CD Support LLC’s (“CD Support”) August 9, 2023 Notice of Termination. Cano Health LLC (“Cano Health”) of course denies any allegation of breach and refers you to the pleadings filed in the litigation. This serves to confirm that consistent with the August 9, 2023 letter, the Dental Services Administration Agreement between CD Support and Cano Health will terminate on October 8, 2023.

All rights reserved.

Very truly yours,



David J. Armstrong, Esq
SVP, General Counsel and Chief
Compliance Officer