

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EBH TOPCO, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-11212 (BLS)

(Jointly Administered)

Re: Docket Nos. 569, 570, 589 & _____

ORDER (I) APPROVING THE ADEQUACY OF THE DISCLOSURES IN THE COMBINED PLAN AND DISCLOSURE STATEMENT ON AN INTERIM BASIS, (II) SCHEDULING THE CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS, (III) ESTABLISHING PROCEDURES FOR THE SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE COMBINED PLAN AND DISCLOSURE STATEMENT, (IV) APPROVING THE FORM OF BALLOT AND SOLICITATION PACKAGE, AND (V) APPROVING THE NOTICE PROVISIONS

Upon consideration of the *Motion of Debtors for an Order (i) Approving the Adequacy of the Disclosures in the Combined Plan and Disclosure Statement on an Interim Basis, (ii) Scheduling the Confirmation Hearing and Deadline for Filing Objections, (iii) Establishing Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Combined Plan and Disclosure Statement, (iv) Approving the Form of Ballot and Solicitation Package, and (v) Approving the Notice Provisions* (the “**Motion**”);² and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are EBH Topco, LLC (6103), Elements Behavioral Health, Inc. (7176), EBH Holding Company, Inc. (0370), EBH Big Rock, Inc. (1880), SoCal Rehab and Recovery, Inc. (3741), The Sexual Recovery Institute, Inc. (1279), Westside Sober Living Centers, Inc. (5717), Ehrman Subsidiary Corp. (3958), PROMAL2, Inc. (1377), PROMAL4, Inc. (2453), SBAR2, Inc. (9844), Promises Residential Treatment Center VI, Inc. (1112), Assurance Toxicology Services, LLC (9612), Elements Screening Services, Inc. (0055), TRS Behavioral Care, Inc. (6343), Spirit Lodge, LLC (1375), San Cristobal Treatment Center, LLC (1419), EBH Acquisition Subsidiary, Inc. (6132), EBH Services of Florida, Inc. (6802), Outpatient Services FL, Inc. (9596), EBH Northeast Services, Inc. (3551), Intensive Outpatient Services PA, Inc. (5581), Wrightsville Services, LLC (9535), NE Sober Living, Inc. (1955), Northeast Behavioral Services, Inc. (8881), The Ranch on Piney River, Inc. (0195), Outpatient Services TN, Inc. (5584), EBH Southwest Services, Inc. (5202), Elements Medical Group of Utah, Inc. (9820), Southeast Behavioral Health Services, Inc. (1267), Elements Medical Group of Mississippi, Inc. (4545), and Elements Medical Group of Arizona, Inc. (8468). The Debtors’ mailing address is 5000 Airport Plaza Dr., Suite 100, Long Beach, California 90815.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

§§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Combined Plan and Disclosure Statement is hereby APPROVED on an interim basis under Bankruptcy Code section 1125, Bankruptcy Rule 3017, and Local Rule 3017-2.
3. The schedule of the following dates is hereby approved:

Voting Procedures Hearing Objection Deadline	November 20, 2018 at 4:00 p.m.
Voting Procedures and Interim Disclosure Statement Hearing	November 27, 2018 at 10:00 a.m.
Voting Record Date	The earlier of November 27, 2018 or the entry of the Interim Approval and Procedures Order.
Solicitation Commencement Date	Within five (5) business days after entry of the Interim Approval and Procedures Order.
Deadline to File Plan Supplement	January 10, 2019 at 4:00 p.m.
Deadline for Creditors to File Rule 3018 Motions	January 14, 2019 at 4:00 p.m.
Deadline for Debtors to Respond to Rule 3018 Motions	January 11, 2019 at 4:00 p.m.
Voting Deadline for the Combined Plan and Disclosure Statement	January 14, 2019 at 4:00 p.m.
Combined Plan and Disclosure Statement Objection Deadline	January 14, 2019 at 4:00 p.m.
Opt Out Deadline	January 14, 2019 at 4:00 p.m.

Deadline to File Confirmation Brief and Other Evidence Supporting the Combined Plan and Disclosure Statement	January 18, 2019 at 4:00 p.m.
Deadline to File Voting Tabulation Affidavit	January 18, 2019 at 4:00 p.m.
Combined Hearing	January 24, 2019 at 10:00 a.m.

4. Combined Hearing. The Combined Hearing to consider final approval and Confirmation of the Combined Plan and Disclosure Statement shall commence on **January 24, 2019 at 10:00 a.m. (ET)** before the Honorable Brendan L. Shannon, at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom #1, Wilmington, DE 19801. The Combined Hearing may be continued from time to time by way of announcement of such continuance in open court or otherwise, without further notice to parties in interest.

5. Objections to Confirmation. Objections, if any, to the adequacy of the disclosures in the Combined Plan and Disclosure Statement, or Confirmation of the Combined Plan and Disclosure Statement, must be filed and served by **January 14, 2019 at 4:00 p.m. (ET)** (the “**Objection Deadline**”). Objections must:

- a. be in writing;
- b. comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules;
- c. state the name and address of the objecting party and the amount and nature of the Claim or Interest asserted by such party against the Debtors, their estates, or property;
- d. state with particularity the basis and nature of any objection to the Combined Plan and Disclosure Statement; and
- e. be filed with the Court and served before the Objection Deadline on the following parties (collectively, the “**Notice Parties**”): (i) counsel to the Debtors, Polsinelli PC, 222 Delaware Ave., Suite 1101, Wilmington, Delaware 19801 (Attn: Christopher A. Ward and Shanti M. Katona); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Hannah Mufson McCollum); (iii) counsel to PBBH, McDonald Hopkins LLP, 300 N. LaSalle Street, Suite 1400, Chicago, IL 60654 (Attn: David Agay) and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347 (Attn: Derek C. Abbott); and (iv) counsel to the Committee, Arent Fox LLP, 1301

Avenue of the Americas, Floor 42, New York, NY 10019 (Attn: Robert M. Hirsh) and Bayard, P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Justin R. Alberto).

6. Replies and Briefs in Support of Confirmation. The deadline to file replies to objections, if any, and briefs in support of the Combined Plan and Disclosure Statement shall be January 18, 2019 at 4:00 p.m. (ET).

7. Temporary Allowance of Claims. The deadline for filing and serving a Rule 3018(a) Motion shall be January 14, 2019 at 4:00 p.m. (ET) (the “**Rule 3018(a) Motion Deadline**”). A Rule 3018(a) Motion must:

- a. be in writing;
- b. comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules;
- c. state the name and address of the party asserting the Rule 3018(a) Motion;
- d. state with particularity the legal and factual bases for the Rule 3018(a) Motion; and
- e. be filed with the Court and served on the Notice Parties so that it is received no later than the Rule 3018(a) Motion Deadline.

8. Any party who timely files a Rule 3018(a) Motion shall be provided a Ballot and permitted to cast a provisional vote to accept or reject the Combined Plan and Disclosure Statement. To the extent that the Debtors are unable to resolve the issues underlying the Rule 3018(a) Motion before the Combined Hearing, such motion shall be considered by the Court at the Combined Hearing. The Court shall then determine whether the provisional Ballot should be counted as a vote on the Combined Plan and Disclosure Statement and, if so, the amount, if any, in which the party filing the Rule 3018(a) Motion will be entitled to vote.

9. Voting Procedures. Only the following Holders of Claims in the Voting Classes shall be entitled to vote with regard to such Claims:

- a. Holders of Claims who have filed a timely Proof of Claim that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date, and (ii) is not the subject of a pending objection, other than a “reduce and allow” objection. A Holder of a Claim that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim in the reduced amount contained in such objection absent a further Order of the Court.
- b. Holders of Claims who are listed in the Schedules, provided that such Claim is not scheduled as contingent, disputed, or unliquidated;
- c. Holders of Claims temporarily allowed to vote on the Combined Plan and Disclosure Statement pursuant to Bankruptcy Rule 3018(a);
- d. Holders of Claims whose Claims are in an amount agreed upon by the Debtors evidenced in a document filed with the Court, in an Order entered by the Court, or otherwise memorialized document pursuant to authority granted by the Court; and
- e. the assignee of any Claim that was transferred on or before the Voting Record Date by any Entity described in subparagraphs (a) through (d) above; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e).

10. Voting Record Date. The Voting Record Date shall be the earlier of (a) November 27, 2018; or (b) the date of entry of this Interim Approval and Procedures Order.

11. Confirmation Hearing Notice. The Confirmation Hearing Notice, substantially in the form attached hereto as Exhibit 1 is approved as it complies with the requirements of Bankruptcy Rules 2002(b) and (d), and 3017(d), and Local Rule 3017-2. Within five business days after the Court enters this Order, the Debtors shall mail, or cause to be mailed, by first-class mail, the Confirmation Hearing Notice to: (a) all known creditors of the Debtors, as reflected in the Debtors books and records and creditor matrix; (b) all known equity security holders of the Debtors, as reflected in the Debtors’ books and records and creditor matrix; and (c) all other entities required to be served under Bankruptcy Rules 2002 and 3017.

12. Notice of Non-Voting Status. The Debtors are not required to transmit Solicitation Packages to Holders of Claims in Class 1 (DIP Facility Claims), Class 2 (Secured Tax Claims),

Class 5 (Other Secured Claims), Class 6 (Priority Claims), Class 8 (Intercompany Claims), and Class 9 (Equity Interests) (collectively, the “**Non-Voting Classes**”). Within five business days after the Court enters this Order, the Debtors shall mail, or cause to be mailed, by first-class mail, a Notice of Non-Voting Status to Holders of Claims in Classes 1, 2, 6, 8, and 9.

13. Solicitation Packages. Within five business days after the Court enters this Order, the Debtors shall mail, or cause to be mailed, by first-class mail, the Solicitation Packages (the “**Solicitation Date**”). The Solicitation Packages will be comprised of:

- a. the Combined Plan and Disclosure Statement and all other exhibits annexed thereto, which documents the Debtors propose to distribute via CD-ROM format instead of printed copies;
- b. this Interim Approval and Procedures Order, excluding the exhibits annexed thereto;
- c. the Confirmation Hearing Notice;
- d. a customized Ballot, substantially in the form attached hereto as Exhibit 2, which shall include voting instructions and a pre-addressed, postage prepaid return envelope; and
- e. such other materials as the Court may direct.

14. Ballots shall *only* be provided in printed format. Printed copies of the other documents in the Solicitation Packages may be obtained by contacting the Claims and Balloting Agent by: (a) emailing ebhinfo@donlinrecano.com; (b) writing Donlin, Recano & Company, Inc., Re: EBH Topco, LLC, et al., P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219; or (c) calling (866) 416-0554.

15. Notwithstanding the previous paragraphs, no service of any kind shall be required to be made upon any Person to whom the Debtors mailed a notice of the meeting of creditors under Bankruptcy Code section 341, notice of the Sale, or notice of the applicable Bar Dates and received either of such notices returned by the United States Postal Service marked

“undeliverable as addressed,” “moved--left no forwarding address,” “forwarding order expired” or similar marking or reason, unless the Debtors have been informed in writing by such Person of that Person’s new address.

16. Publication Notice. The Debtors are authorized, but not directed to publish the Publication Notice, substantially in the form attached hereto as Exhibit 5, at least twenty-eight days prior to the Combined Hearing in the *Wall Street Journal* (National Edition), *USA Today* (National Edition), or *New York Times* (National Edition).

17. Voting Deadline. In order to be counted, Ballots for accepting or rejecting the Combined Plan and Disclosure Statement must be received by the Claims and Balloting Agent by **4:00 p.m. (ET) on January 14** (the “**Voting Deadline**”).

18. Tabulation Procedures. The following procedures shall apply in the tabulation of Ballots:

- a. any Ballot received after the Voting Deadline, unless the Court grants an extension to the Voting Deadline with respect to such Ballot;
- b. any Ballot that is illegible or contains insufficient information;
- c. any Ballot cast by a Person or Entity that does not hold a Claim in the Class that is entitled to vote to accept or reject the Combined Plan and Disclosure Statement;
- d. any Ballot for cast for a Claim designated as unliquidated, contingent, or disputed or as zero (0) or unknown in amount and for which no Rule 3018(a) Motion has been filed by the Rule 3018(a) Motion Deadline;
- e. any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Combined Plan and Disclosure Statement or that indicates both acceptance and rejection of the Combined Plan and Disclosure Statement;
- f. simultaneous duplicative Ballots voted inconsistently;
- g. Ballots partially rejecting and partially accepting the Combined Plan and Disclosure Statement;

- h. any Ballot received other than the official form sent by the Claims and Balloting Agent;
 - i. any unsigned Ballot; or
 - j. any Ballot that is submitted by facsimile.
19. The following additional Tabulation Procedures shall apply:
- a. For purposes of the numerosity and amount requirements of Bankruptcy Code Section 1126(c), to the extent that it is possible to do so for the Voting Class, separate Claims held by a single Creditor against the Debtors within the same Voting Class will be aggregated as if such Creditor held a single Claim against the Debtors in such Voting Class, and the votes related to those Claims shall be treated as a single vote on the Combined Plan and Disclosure Statement.
 - b. The method of delivery of Ballots to be sent to the Claims and Balloting Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Claims and Balloting Agent actually receives the original executed Ballot. Delivery of a Ballot by electronic mail is valid.
 - c. If multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect such Holder's intent and will supersede and revoke any prior Ballot.
 - d. If a Proof of Claim contains any amount that is either or both contingent or unliquidated, as determined by the Debtors and the Claims and Balloting Agent in their reasonable discretion, then any vote cast on account of such Claim shall only be tabulated with respect to the non-contingent and liquidated amount set forth in the Proof of Claim, as determined by the Debtors and the Claims and Balloting Agent in their reasonable discretion, or \$1.00 if no portion of the Claim is determined to be non-contingent and liquidated.
 - e. Creditors with multiple Claims within the Voting Class must vote all such Claims in the Voting Class to either accept or reject the Combined Plan and Disclosure Statement, and may not split their vote(s).
 - f. In the event a Claim is transferred after the transferor has executed and submitted a Ballot to the Claims and Ballot Agent, the transferee of such Claim shall be bound by any such vote (and the consequences thereof) made by the Holder of such transferred Claim as of the Voting Record Date.
 - g. Unless otherwise provided, any party who has delivered a valid Ballot for the acceptance or rejection of the Combined Plan and Disclosure Statement may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Claims and Ballot Agent at any time prior to the Voting

Deadline. To be valid, a notice of withdrawal must (a) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s); (b) be signed by the withdrawing party in the same manner as the Ballot being withdrawn; and (c) contain a certification that the withdrawing party owns the Claim(s) and possesses the right to withdraw the vote sought to be withdrawn. The Debtors intend to consult with the Claims and Ballot Agent to determine whether any withdrawals of Ballots were received and whether the requisite acceptances of the Combined Plan and Disclosure Statement have been received. The Debtors expressly reserve the right to contest the validity of any such withdrawals of Ballots.

- h. A person signing a Ballot in his or her capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of a Claim must indicate such capacity when signing.
- i. Neither the Debtors, nor any other Entity, will be under a duty to provide notification of defects or irregularities with respect to delivered Ballots, other than as provided in the Voting Report, nor will any of them incur liability for failure to provide such notification.
- j. Unless waived by the Debtors or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline, or such Ballots will not be counted.
- k. The Claims and Ballot Agent will date and time stamp all Ballots when received. The Claims and Ballot Agent shall retain the original Ballots and electronic copy of the same for a period of one year after the Effective Date, unless otherwise ordered by the Court.

20. The Debtors are authorized to waive any of the above- specified requirements for completion and submission of Ballots, so long as such required is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules.

21. Voting Report. The Claims and Balloting Agent shall file the Voting Report on or before January 18, 2019. The Voting Report will contain, among other things: the voting results on a consolidated basis; a certification of the amount and number of Allowed Claims in each Class accepting or rejecting the Combined Plan and Disclosure Statement; and delineating every Ballot which does not conform to the Tabulation Procedures.

22. Service and Notice Adequate and Sufficient. Service of all notices and documents described herein in the time and manner set forth herein shall constitute due, adequate and sufficient notice, and no other or further notice shall be necessary.

23. The Debtors, with the written consent of the Committee and PBBH, are authorized to make non-substantive or immaterial changes to the Combined Plan and Disclosure Statement and related documents without further order of the Court, including, but not limited to: changes to correct typographical and grammatical errors, and to make conforming changes among the Combined Plan and Disclosure Statement and any other materials comprising the Solicitation Packages.

24. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

25. The Court shall retain jurisdiction to implement, interpret and effectuate the provisions of this Order

Dated: Nov 28, 2018
Wilmington, Delaware


THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE