

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

In re

OSG Group Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10718 (JTD)

Re: D.I. 22

(Joint Administration Requested)

**OBJECTION OF THE UNITED STATES TRUSTEE TO DEBTORS' MOTION FOR ENTRY
OF ORDER SCHEDULING COMBINED DISCLOSURE STATEMENT APPROVAL AND
PLAN CONFIRMATION HEARING**

Andrew R. Vara, United States Trustee for Region 3 (the "U.S. Trustee"), through his undersigned counsel, objects to the *Debtors' Motion For Entry Of An Order (A) Scheduling A Combined Hearing On The*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: OSG Group Holdings, Inc. (0311); OSG Intermediate Holdings, Inc. (1288); OSG Holdings, Inc. (2036); Output Services Group, Inc. (8044); Globalex Corporation (5365); SouthData, Inc. (5336); DoublePositive Marketing Group, Inc. (8221); National Business Systems, Inc. (6946); NCP Solutions, LLC (5620); The Garfield Group, Inc. (9966); Mansell Group Holding Company (9354); Diamond Marketing Solutions Group, Inc. (3531); Applied Information Group, Inc. (7381); Microdynamics Corporation (0423); Mansell Group, Inc. (7898); National Data Services of Chicago, Inc. (9009); Microdynamics Group Nebraska, Inc. (5711); Microdynamics Transactional Mail, LLC (4060); JTT Enterprises, Inc. (dba Optimal Outsource) (7792); Words, Data and Images, LLC (dba Gabriel Group) (2248). Globalex Corporation's service address is 150 S Pine Island Road, Suite 300, Plantation, FL 33324. DoublePositive Marketing Group, Inc.'s, Mansell Group Holding Company's, Diamond Marketing Solutions Group, Inc.'s, Applied Information Group, Inc.'s, and Microdynamics Corporation's service address is 900 Kimberly Drive, Carol Stream, IL 60188. SouthData, Inc.'s service address is 201 Technology Lane, Mount Airy, NC 27030. National Business Systems, Inc.'s service address is 9201 E Bloomington Fwy, Ste LL, Bloomington, MN 55420. NCP Solutions, LLC's service address is 5200 East Lake Boulevard, Birmingham, AL 35217. JTT Enterprises, Inc. (dba Optimal Outsource)'s service address is 7 Rancho Circle, Lake Forest, CA 92630. Words, Data and Images, LLC (dba Gabriel Group)'s service address is 3190 Rider Trail South, Earth City, MO 63045. OSG Group Holdings, Inc.'s, OSG Intermediate Holdings, Inc.'s, OSG Holdings, Inc.'s, Output Services Group, Inc.'s, The Garfield Group, Inc.'s, Mansell Group, Inc.'s, National Data Services of Chicago, Inc.'s, Microdynamics Group Nebraska, Inc.'s, and Microdynamics Transactional Mail, LLC's service address is 775 Washington Avenue, Carlstadt, NJ 07072.

Disclosure Statement And Plan Confirmation; (B) Approving Form And Notice Of Combined Hearing; (C) Establishing Procedures For Objections To The Plan And Disclosure Statement; (D) Approving Solicitation Procedures; (E) Adjourning The Meeting Of Creditors; And (F) Granting Related Relief (D.I. 22) (the “Motion”), and in support of his objection respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors seek to confirm a prepackaged plan, which would restructure about \$824 million of debt, *nineteen days* after the Petition Date. These Debtors and their non-Debtor subsidiaries provide outsourced communication services to clients all over the world, and they employ over 4,700 individuals and service over 6,000 customers in nineteen different countries. *See* Plan Art. I. Federal Rule of Bankruptcy Procedure 2002(b) mandates that “the clerk, or some other person *as the court may direct* shall give *all creditors . . . not less than 28 days’ notice by mail*” of the deadline for filing objections to a disclosure statement and confirmation of a plan. Fed. R. Bankr. P. 2002(b) (emphasis added). Although the Debtors assert they have complied with Rule 2002(b) because solicitation began *pre-petition* on July 26, 2022 and the Debtors sent certain notices on that date, the Debtors have not complied with the Rule because their cases were not filed until the evening of Saturday, August 6, 2022. In short, the earliest possible “start” date for calculating notice under Rule 2002(b) is Monday, August 8, 2022.

2. Therefore, until all creditors receive 28 *post-petition* days’ notice by United States mail of the confirmation objection deadline, this Court should deny the Motion.

JURISDICTION

3. Pursuant to 28 U.S.C. § 1334, applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and 28 U.S.C. § 157(b)(2)(A), this Court has jurisdiction to hear and resolve this objection.

4. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with monitoring the federal bankruptcy system. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that 11 U.S.C. § 307 gives the U.S. Trustee “public interest standing”); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a “watchdog”). One of the U.S. Trustee’s duties is to supervise the administration of chapter 11 cases by, whenever he considers it appropriate, “monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements[.]” 28 U.S.C. § 586(a)(3)(B).

5. The U.S. Trustee has standing to be heard on the Motion pursuant to 11 U.S.C. § 307.

BACKGROUND

6. On August 6, 2022 (the “Petition Date”), the above-captioned Debtors filed the petitions with this Court which initiated the above-captioned cases.

7. The Debtors provide outsourced communication services to clients all over the world, and they employ over 4,700 individuals and service over 6,000 customers in nineteen different countries. *See* Plan Art. I.

8. According to the Disclosure Statement filed at D.I. 15, the Debtors have approximately \$824 million in debt, of which \$807.6 million is secured. The proposed

restructuring under the Plan (filed at D.I. 16) will deleverage the Debtors by \$133.7 million. To achieve this, the Debtors contemplate the following transactions:

A \$25.4 million DIP Facility, of which \$15 million will be in the form of New Money DIP Term Loans, which will convert on the Effective Date into (i) new equity investment in exchange for the issuance of 28.8% of New Convertible Preferred Equity, and (ii) \$1,872,000 in principal amount of New Mezzanine Debt Loans in respect of accrued interest on the Rolled-Up DIP Term Loans;

Replacement of \$598.1 million of Existing First Lien Claims with approximately \$601.1 million of Amended and Restated First Lien Loans on the terms set forth in the Amended and Restated First Lien Documents;

Conversion of approximately \$157.9 million of Existing Second Lien Claims to (i) New Mezzanine Debt Loans and (ii) 100% of the Reorganized Common Equity (subject to dilution by the Management Incentive Plan and the conversion of New Convertible Preferred Equity); and

Equitization of the Globalex Secured Note, the Vox Unsecured Promissory Note, and the OSG February 8 Unsecured Promissory Note and contribution of the Sponsor Globalex Interest to the Debtors in exchange for 43.9% of the New Convertible Preferred Equity.

D.I. 15.

9. Claimants in classes 1, 2, and 6 were solicited prepetition and have voted to accept the Plan. *See* Voting Declaration at D.I. 17. However, existing interest holders in classes 8 and 9 are impaired, are slated to receive nothing under the Plan, and did not vote on the Plan. These parties were not part of the Restructuring Support Agreement negotiations, unlike claimants in classes 1, 2, and 6.

10. The Debtors' Plan also assumes certain financial projections. *See* Disclosure Statement Ex. D. Among the assumptions is a decreasing pension liability on account of the Debtors' obligations under an unsecured pension guarantee for obligations under the "UK DB Plan." D.I. 15 at Art. 4.1. In the Disclosure Statement, the Debtors admit that "[t]he legislative regime governing such plans, including funding requirements, is onerous." *Id.* at Art. VI.

ARGUMENT

I. A Confirmation Hearing Should Not Be Held On Debtors' Proposed Timeline

11. The confirmation hearing should occur at least 28 post-petition days after notice is given.

12. Federal Rule of Bankruptcy Procedure 3017 provides that a movant must provide at least 28 days' notice to all holders of claims and interests "and other parties in interest" of the hearing on approval of the disclosure statement. Fed. R. Bankr. P. 3017. Likewise, Federal Rule of Bankruptcy Procedure 2002 requires 28 days' notice to all creditors of the deadline for "filing objections and the hearing to consider approval of a disclosure statement . . . [and] for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan[.]" Fed. R. Bankr. P. 2002(b). The same rule further provides a separate 28-day notice period of the time for filing objections to confirmation of a proposed plan, and Bankruptcy Rule 3020(b)(1) provides that objections to confirmation of a plan must be filed and served "within a time fixed by the court." *Id.*; Fed. R. Bankr. P. 3020(b)(1).

13. "Pre-packaged plans offer a means of expediting the bankruptcy process by doing most of the work in advance of filing. That efficiency, however, must not be obtained at the price of diminishing the integrity of the process." *In re Congoleum Corp.*, 426 F.3d 675, 693 (3d Cir. 2005).

14. Under the proposed Plan, existing interest holders will have their interests canceled if the Plan is confirmed. The propriety of such treatment depends on whether the Debtors' valuation is sound. Interest holders deserve *at least* the amount of time contemplated by the Rules to consider the Plan. As detailed above, the Debtors' valuation is premised on complex

assumptions, including (but not limited to) their future obligations under the UK DB Plan. Although the Debtors have asserted that the Plan must be confirmed by August 31, 2022, *see* Motion at ¶ 27, because of an impending, non-waivable default of an interest payment, the impending default is a creature of the Debtors' own making. The Debtors have been aware of it since at least the time they executed the First Lien Credit Agreement (as amended). Furthermore, if the parties to the Restructuring Support Agreement have been negotiating for months, it seems at least possible that they could have structured their timeline in a manner that complied with the Rules to avoid the need for such an expedited confirmation schedule. The Debtors' self-created emergency cannot be used to circumvent the Rules to the detriment of creditors and/or interest holders.

CONCLUSION

15. For the foregoing reasons, the U.S. Trustee request that this Court deny the Motion.

RESERVATION OF RIGHTS

16. The U.S. Trustee reserves all of his rights to object to confirmation of the Plan and approval of the Disclosure Statement on any and all grounds, to amend this objection, and to take discovery regarding the present matter.²

² The U.S. Trustee and the Debtors have been informally discussing other of the U.S. Trustee's concerns with the Motion. The concerns relate certain modifications to the proposed order regarding the changing of votes and Rule 3018 and mailing of the Plan and Disclosure statement to interest holders. The U.S. Trustee believes most, if not all, of such concerns will be addressed by the scheduled First Day Hearing. To the extent those concerns are not addressed, the U.S. Trustee reserves the right to raise same at the first day hearing.

Dated: August 8, 2022
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE

By: /s/ Rosa Sierra

Rosa Sierra

Trial Attorney

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CERTIFICATE OF SERVICE

I, Rosa Sierra-Fox, hereby attest that on August 8, 2022, I caused to be served a copy of this Objection by electronic service on the registered parties via the Court's CM/ECF system and upon the following parties:

Proposed Debtors' Counsel

Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036 (Attn: Gregg M. Galardi and Cristine Pirro Schwarzman, email: gregg.galardi@ropesgray.com and cristine.schwarzman@ropesgray.com) and Bayard, P.A, 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Erin R. Fay and Gregory J. Flasser, email: efay@bayardlaw.com and gflasser@bayardlaw.com).

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/s/Rosa Sierra-Fox

Rosa Sierra-Fox