Docket #0026 Date Filed: 3/19/2019

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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

☐ Affects All Debtors
☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☒ Affects St. Francis Medical Center
☒ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital Foundation
☐ Affects St. Francis Medical Center of Lynwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly administered with:
Case No. 2:18-bk-20162-ER;
Case No. 2:18-bk-20163-ER;
Case No. 2:18-bk-20164-ER;
Case No. 2:18-bk-20165-ER;
Case No. 2:18-bk-20167-ER;
Case No. 2:18-bk-20168-ER;
Case No. 2:18-bk-20169-ER;
Case No. 2:18-bk-20171-ER;
Case No. 2:18-bk-20172-ER;
Case No. 2:18-bk-20173-ER;
Case No. 2:18-bk-20175-ER;
Case No. 2:18-bk-20176-ER;
Case No. 2:18-bk-20178-ER;
Case No. 2:18-bk-20179-ER;
Case No. 2:18-bk-20180-ER;
Case No. 2:18-bk-20181-ER;

Chapter 11 Cases

Hon. Ernest M. Robles

Adversary No. 2:19-ap-01002-ER

PLAINTIFFS' OPPOSITION TO MOTION FOR ENTRY OF PROTECTIVE ORDER

Date: April 2, 2019
Time: 10:00 a.m.
Courtroom: 1568

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

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ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation,

Plaintiffs,

v.

LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency,

Defendant.

TO THE HONORABLE ERNEST M. ROBLES, UNITED STATES BANKRUPTCY JUDGE, DEFENDANT, AND ALL OTHER PARTIES ENTITLED TO NOTICE HEREOF:

Plaintiffs, St. Vincent Medical Center and St. Francis Medical Center ("Plaintiffs") herein oppose Defendant's *Motion for Entry of Protective Order and Memorandum of Points and Authorities in Support Thereof* [Docket No. 20] (the "Motion") and represent as follows:

I.

INTRODUCTION

Defendant seeks a protective order to stay all discovery in this action pending the Court's ruling on Defendant's *Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary Proceeding* [Docket No. 17], (the "Dismissal/Stay Motion"), set for hearing on the same date as the present Motion.

The Motion is made on the grounds that the underlying written agreements upon which this adversary proceeding are based contain provisions requiring mandatory arbitration (the "Arbitration Provisions"), and that this adversary proceeding is a "non-core" action.

However, as more fully set forth in *Plaintiffs' Response to Defendant's Memorandum of Points and Authorities Regarding Non-Core Designation* [Docket No. 22] and *Plaintiffs' Opposition to Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary Proceeding* [Docket No. 25], filed concurrently herewith, (collectively, the "Oppositions"), this adversary proceeding should not be stayed in favor of private arbitration because it is a "core" proceeding involving archetypal claims for turnover under Section 542(b) of

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the Bankruptcy Code and for violation of the automatic stay under Section 362 of the Bankruptcy Code. Moreover, because the Arbitration Provisions provide for potentially limited discovery pursuant to California Code of Civil Procedure ("CCP") §1283.05, Defendant's Motion is brought for one purpose: hindrance and delay.

II.

ARGUMENT

As this Court stated in *In re BBeautiful*, 2017 WL 93245 at *14 (Bankr. C.D. Cal. Mar. 8, 2017)(Robles, Bank. J.), in relation to a request to stay an adversary proceeding pending ruling by the District Court on a motion to withdraw the reference:

> "The standard of issuance of a stay pending the District Court's ruling upon a motion for withdrawal of the reference 'is the same as on any motion for stay.' *In re Matterhorn Grp., Inc.*, No. 2:10-CV-02849-GEB, 2010 WL 4628119, at *2 (E.D. Cal. Nov. 5, 2010). That standard requires the Court to consider the following four factors:
>
> > (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.
>
> *Nken v. Holder*, 556 U.S. 418, 426 (2009)."

Here, as set forth in the Oppositions, Defendant has certainly not shown a likelihood for success on the merits on its Dismissal/Stay Motion—this is a core proceeding involving fundamental bankruptcy policies and issues inextricably intertwined with the bankruptcy which should be determined by this Court, consistent with underlying bankruptcy policy that favors efficient resolution of claims and conservation of bankruptcy assets. *Continental Ins. Co. v. Thorpe Insulation Co.* (*In re Thorpe Insulation Co.*), 671 F.3d 1011, 1021 (9th Cir. 2012). *See also Process Am., Inc. v. Cynergy Holdings, LLC* (*In re Process Am., Inc.*), 588 B.R. 82, 110 (Bankr. C. D. Cal. 2018) (recoupment and setoff claims subject to determination by bankruptcy court notwithstanding the claim amounts were determined and liquidated by District Court; motion to dismiss denied).

Moreover, Plaintiffs strongly believe that arbitration will pose a threat of additional delays, extra- ordinary costs, and derailment of prospects for a timely plan confirmation, contrary to fundamental bankruptcy policy.

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Defendant has shown absolutely no irreparable injury that would result if the requested protective order staying discovery is denied. Instead, Plaintiffs would be substantially injured if a protective order is granted because of the delay and because Plaintiffs would be denied the use of the discovery available under Federal Rules of Bankruptcy Procedure 7026, *et seq.*, through which Plaintiffs can propound all available discovery tools, governed only by reasonableness and proportionality. Pursuant to the Arbitration Clauses, Plaintiffs would be limited to the discovery rights afforded under CCP §1283.05, which precludes depositions (and related document subpoenas) for discovery unless leave to so proceed is granted by the arbitrator. By contrast, Rule 7026(d)(1) of the Federal Rules of Bankruptcy Procedure permits standard discovery after the parties have initially conferred pursuant to Rule 7026(f). Plaintiffs have duly conferred with Defendant and are entitled to pursue discovery.

Finally, public interest compels the fullest amount of discovery rights in furtherance of an informed and prompt resolution of litigation. Hence, the Motion should be denied.

III.

CONCLUSION

For the foregoing reasons, the Motion should be denied and any discovery served upon Defendant in advance of any ruling on the Dismissal/Stay Motion should be subject to timely response by Defendant.

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

Dated: March 19, 2019

/s/ Steven J. Kahn
Steven J. Kahn
Co-Counsel to Chapter 11 Debtors and
Debtors In Possession

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify):* ***PLAINTIFFS' OPPOSITION TO MOTION FOR ENTRY OF PROTECTIVE ORDER*** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **March 19, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Anthony Dutra adutra@hansonbridgett.com
- Steven J Kahn skahn@pszyjw.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Neal L Wolf nwolf@hansonbridgett.com, calendarclerk@hansonbridgett.com,lchappell@hansonbridgett.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **March 19, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA HAND DELIVERY
Honorable Ernest M. Robles
U.S. Bankruptcy Court
255 E. Temple Street, Suite 1560 / Courtroom 1568
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 19, 2019	Mary de Leon	/s/ Mary de Leon
Date	*Printed Name*	*Signature*