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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

Adv. Proc. No. 2:19-ap-01002-ER

REPLY BRIEF IN SUPPORT OF MOTION FOR ENTRY OF PROTECTIVE ORDER

Date: April 3, 2019
Time: 10:00 A.M.
Judge: Hon. Ernest M. Robles
Courtroom: 1568

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.

Pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure, which is applicable to this Adversary Proceeding under Rule 7026 of the Bankruptcy Rules, L.A. Care has requested that the Court enter a Protective Order staying all discovery in this Adversary Proceeding, including but not limited to the exchange by the parties of "Initial Disclosures" under Federal Rule of Civil Procedure 26(a)(1), until the Court has ruled upon the Motion to Dismiss or Stay that L.A. Care filed in this Adversary Proceeding on Friday, February 15, 2019.

L.A. Care is entitled to the requested relief because, at a minimum, as more fully described by L.A. Care in the Motion to Dismiss or Stay, all of Plaintiffs' Claims for Relief in this Adversary Proceeding are subject to mandatory arbitration under separate, but identical, arbitration clauses ("Arbitration Clauses") in the contracts between the respective parties. Under those Arbitration Clauses, *inter alia*, the parties agreed that they "shall be entitled to discovery in accordance with the provisions of the California Code of Civil Procedure Section 1283.05." [Complaint at Exh. A ¶ 7.3(b), ECF No. 1-1; Complaint at Exh. C ¶ 6.3(c), ECF No. 1-3.] In its Motion to Dismiss or Stay, L.A. Care has asked the Court, *inter alia*, to dismiss or stay this Adversary Proceeding in deference to the Arbitration Clauses. [*See* Motion to Dismiss or Stay, ECF No. 17.] Hence, the commencement and conduct of discovery in this Adversary Proceeding under Rule 26 and related sections of the Federal Rules of Civil Procedure may well be both

inappropriate and wasteful, and thereby cause both parties to incur "undue burden or expense." Fed. R. Civ. Pro. 26(c)(1).

L.A. Care respectfully suggests that all discovery in this Adversary Proceeding, including but not limited to the sharing of Initial Disclosures, be stayed until the ruling on the Motion to Dismiss or Stay. At that time, if necessary and appropriate, a revised discovery schedule can be set. The requested relief will spare the parties potentially undue burden and expense.

The Court may enter a protective order of this nature in these circumstances. Federal Rule of Civil Procedure 26(c)(1)(B) expressly provides, in relevant part:

> A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending… The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, ***or undue burden or expense***, including one or more of the following: … (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery…

(Emphasis and italics added.)

In this circumstance, in light of the existence and enforceability of the Arbitration Clauses, the suspension of discovery is manifestly reasonable.

Plaintiffs argue that "…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 the Bankruptcy Code and for violation of the automatic stay under Section 362 of the Bankruptcy Code." Plaintiffs go on to claim, "[m]oreover, because the Arbitration Provisions [of the subject contracts] 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." (Plaintiffs' Opposition to Motion for Entry of Protective Order ["Opp.P.O."] at 2:27-28; 3:1-4; emphasis added.)

L.A. Care will not burden the record with substantial additional briefing on the core/non-core issue. That issue is already the subject of five briefs and/or memoranda that have already been, or are simultaneously being, filed by the parties. Suffice to say,

(1) the essence of Plaintiffs' case (***and the subject of each Plaintiff's initial Claims for Relief***) is a $25 million state law contract dispute in which the issues of liability and damages are sharply disputed and not matured, and damages are decidedly unliquidated; (2) Plaintiffs' claim that they have asserted "archetypal claims for turnover under Section 542(b) of the Bankruptcy Code" stands the plain meaning of "archetypal" on its head and flatly misstates settled law with respect to what kind of assets or properties are subject to turnover; (3) in an inappropriate attempt to avoid arbitration, Plaintiffs have transparently attempted to turn a non-core contract dispute, where the issues of liability and damages are in substantial doubt and contention, into a "core" turnover proceeding; and (4) under the arbitration provisions to which all parties agreed, "[t]he parties shall be entitled to discovery in accordance with the provisions of the California Code of Civil Procedure Section 1283.05."

Importantly, as the United States Court of Appeals for the Ninth Circuit noted in *In re Thorpe Insulation Co*., 671 F.3d 1011, 1021 (9th Cir. 2012), "not all core bankruptcy proceedings are premised on provisions of the Code that 'inherently conflict' with the Federal Arbitration Act; nor would arbitration of such proceedings necessarily jeopardize the objectives of the Bankruptcy Code." (Citation omitted.) In short, even core claims are subject to arbitration where arbitration would not conflict with the purposes of the Bankruptcy Code.

In the Ninth Circuit, as well as virtually all (if not all) of the other Circuits, the presumption is very much in favor of arbitration, particularly of non-core claims like the contract dispute in this case. Where the parties have entered into an arbitration agreement, a bankruptcy court [i] must order non-core claims to arbitration, [ii] must order core claims to arbitration if arbitration does not directly conflict with the underlying purposes of the Bankruptcy Code, and [iii] can only refuse to compel arbitration of a core claim if arbitration would conflict with the underlying purpose of the Bankruptcy Code. *In re Thorpe*, 671 F.3d at 1021. Even if Plaintiffs have asserted core claims (which they have not), arbitration would not conflict with the underlying purposes of the Bankruptcy

Code. Plaintiffs have made no showing to the contrary.

Plaintiffs argue that, for L.A. Care to obtain a stay of discovery, it must meet and pass the four-part test that was articulated by this Court in *In re BBeautiful,* No. 2:16-ap-01506-ER, 2017 WL 93245 (Bankr. C.D. Cal. Mar. 8, 2017). Even if one applies the *BBeautiful* test, L.A. Care is entitled to the requested stay. L.A. Care has made a strong showing that it is likely to succeed on the merits of its arbitration argument. Moreover, if, as Plaintiffs argue, discovery under the Federal Rules of Civil Procedure would be far more extensive (and hence, far more expensive and time consuming) than under California Code of Civil Procedure Section 1283.05 (the parties' jointly chosen discovery vehicle), then L.A. Care will suffer irreparable injury absent entry of an order staying discovery. Issuance of a stay will not substantially injure the Plaintiffs. Whether the case is sent to arbitration or not, they will have discovery. Finally, as the Ninth Circuit opined in *Thorpe*, 671 F.3d at 1020, the public interest lies in favor of arbitration:

> The Federal Arbitration Act, 9 U.S.C. § 1 et seq., establishes "a liberal federal policy favoring arbitration agreement." …The Act provides that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," and that a court must stay a proceeding if it is satisfied that an issue in the proceeding is arbitrable under such an agreement. 9 U.S.C. §§ 2-3. *A court's duty to "rigorously enforce"* arbitration agreements does not diminish "when a party bound by an agreement raises a claim founded on statutory rights… ."

(Citations omitted; italics added).

As reflected in the foregoing quotation, the Federal Arbitration Act contains its own prescription that, where arbitration is appropriate, the court ***must stay*** the proceeding. A party need not qualify for an injunction under the *BBeautiful* test where arbitration is appropriate. The Federal Arbitration Act expressly provides, at 9 U.S.C. § 3:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, ***shall on application of one of the parties stay the trial of the action*** until such arbitration has

> been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

(Emphasis and italics added). The Federal Arbitration Act requires no showing that the applicant satisfy the *BBeautiful* standards.

For the foregoing reasons, L.A. Care respectfully requests that Court enter a Protective Order staying all discovery in this Adversary Proceeding, including but not limited to the exchange by the parties of "Initial Disclosures" under Federal Rule of Civil Procedure 26(a)(1), until the Court has ruled upon the Motion to Dismiss or Stay that L.A. Care filed in this Adversary Proceeding on Friday, February 15, 2019.

DATED: March 26, 2019

HANSON BRIDGETT LLP

By: */s/ Neal L. Wolf*
NEAL L. WOLF
ANTHONY J. DUTRA
Attorneys for Local Initiative Health Authority for Los Angeles County, operating as L.A. Care Health Plan

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: 425 Market Street, 26th Floor, San Francisco, California, 94105

A true and correct copy of the foregoing document entitled (*specify*):

REPLY BRIEF IN SUPPORT 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 March 26, 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:

Steven J Kahn skahn@pszyjw.com
United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On March 26, 2019, 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.

Honorable Judge Ernest M. Robles
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street
Suite 1560
Los Angeles, CA 90012

☐ 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*) _____, 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.

☐ 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 26, 2019	Landa Chappell	Landa Chappell
Date	*Printed Name*	*Signature*