United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, March 6, 2019 **Hearing Room 1568**

11:00 AM
2:18-20151 Verity Health System of California, Inc. **Chapter 11**
Adv#: 2:19-01042 VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a Califo v.

#104.00 HearingRE: [9] Motion to Seal Document. /Notice of Motion and Motion for Authority to File Complaint Under Seal, Memorandum of Points and Authorities and Declaration of Steven J. Kahn in Support Thereof (Kahn, Steven)

Docket 9

Matter Notes:

3/6/2019

The tentative ruling will be the order.
Party to lodge order: Movant

Note to Docket:
Further ordered: date for responsive pleading will be extended to and including March 25, 2019.

POST PDF OF TENTATIVE RULING TO CIAO

Tentative Ruling:

3/5/2019

Tentative Ruling: Denied.

Pleadings Filed and Reviewed:
1) Notice of Motion and Motion for Authority to File Complaint Under Seal [Doc. No. 9] (the "Motion")
2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

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On February 5, 2019, Verity Health System of California, Inc., St. Vincent Medical Center, and St. Francis Medical Center (the "Plaintiffs") filed a redacted *Complaint for Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay, and Injunctive Relief* [Doc. No. 1] (the "Redacted Complaint") against Heritage Provider Network, Inc. (the "Defendant"). Plaintiffs now seek authorization to file an unredacted version of the Complaint under seal.

Plaintiffs state that Defendant has taken the position that Plaintiffs may not divulge portions of the Redacted Complaint. Plaintiffs do not agree with Defendant's position. However, Plaintiffs state that Defendant would not permit Plaintiffs to file an unredacted version of the Redacted Complaint. Plaintiffs' counsel has discussed limiting the redactions with Defendant, but the discussions have proved unsuccessful. Because Defendant does not oppose the filing of an unredacted Complaint under seal, Plaintiffs seek such relief.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 107(b) provides in relevant part: "On request of a party in interest, the bankruptcy court shall … protect an entity with respect to a trade secret or confidential research, development, or commercial information." Commercial information is "information which would cause 'an unfair advantage to competitors by providing them information as to the commercial operations'" of the party seeking protection. *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (internal citations omitted).

Here, Plaintiffs seek to file a complaint under seal. The Redacted Complaint on file with the Court contains so many redactions that it is not possible for the Court to determine the wrongdoing alleged.

Plaintiffs have not established that a complaint which contains mere allegations of wrongdoing constitutes a trade secret or confidential research, development, or commercial information within the meaning of § 107(b). It is difficult for the Court to envision how a complaint could ever fall within the scope of § 107(b), since it merely alleges that the Defendant has engaged in conduct giving rise to liability. Mere allegations are not facts, and are therefore not "information" subject to protection under § 107(b).

Even if the allegations of a complaint did qualify as "information" subject to protection under § 107(b), the evidence in the record does not support the granting of the relief requested. Bankruptcy Courts "must 'carefully and skeptically review

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sealing requests to insure that there really is an extraordinary circumstance or compelling need' to seal the documents at issue. The reason is simple—court records are public records, and sealing abridges the public's right to know." *In re Faucett*, 438 B.R. 564, 568 (Bankr. W.D. Tex. 2010).

Here, Plaintiffs have not identified, even in broad terms, the nature of the information which Defendant contends is protected from disclosure. Nor have Plaintiffs identified the extraordinary circumstances or the compelling supporting the request to file the Complaint under seal. The Motion states only that "Defendant contends that the matters redacted from the Complaint may not be publicly disclosed." Kahn Decl. at ¶ 3.

Further, and perhaps more importantly, permitting the filing of the complaint under seal would severely compromise Court's ability to adjudicate the matters at issue in this proceeding. The redactions are so extensive that the Court is unable to determine the wrongdoing that is alleged. Were the Court to permit Plaintiffs to file the Complaint under seal, it would not be possible for the Court to hear any number of standard litigation motions unless the hearings on such motions were also conducted under seal. For example, the hearing on a Civil Rule 12(b)(6) Motion would have to remain sealed, as such a hearing would inevitably result in the disclosure of the Complaint's redacted allegations. In issuing tentative rulings on matters concerning the Complaint the Court itself may conceivably be violate its own redaction order. When issuing tentatives and crafting orders the Court would need to be extra vigilant that it was not airing information covered by the redaction. In fact, it could not do so considering the broad scope of the redactions.

Litigating an entire action in secrecy is not in the public interest and will not be countenanced by the Court. "The right of public access to judicial records … is 'fundamental to a democratic state' and is analogous to the First Amendment right to freedom of speech and of the press and to the Sixth Amendment guarantee of public trials." *In re Inslaw, Inc.*, 51 B.R. 298, 299 (Bankr. D.D.C. 1985).

Based upon the foregoing, the Motion is DENIED.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you

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wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,	Represented By Samuel R Maizel John A Moe II Tania M Moyron Claude D Montgomery Sam J Alberts Shirley Cho Patrick Maxcy

Defendant(s):

HERITAGE PROVIDER	Pro Se

Plaintiff(s):

VERITY HEALTH SYSTEM OF	Represented By Steven J Kahn
ST. VINCENT MEDICAL	Represented By Steven J Kahn
ST. FRANCIS MEDICAL	Represented By Steven J Kahn