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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 Pro. No. 2:20-ap-01001-ER

PLAINTIFFS' *EX PARTE* MOTION FOR AN ORDER ALLOWING PLAINTIFFS TO FILE CORRESPONDENCE RELATED TO COMPLAINT UNDER SEAL; DECLARATION OF RICHARD G. ADCOCK IN SUPPORT THEREOF

[No Hearing Required Per Bankr. R. 9018]

1820151200106000000000011

VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, SETON MEDICAL CENTER, a California nonprofit public benefit corporation; VERITY HOLDINGS, LLC, a California limited liability company; and

Plaintiffs,

v.

KALI P. CHAUDHURI, M.D., an individual, STRATEGIC GLOBAL MANAGEMENT, INC., a California corporation, KPC HEALTHCARE HOLDINGS, INC. a California Corporation KPC HEALTH PLAN HOLDINGS, INC. a California Corporation, KPC HEALTHCARE, INC. a Nevada Corporation, KPC GLOBAL MANAGEMENT, LLC, a California Limited Liability Company, and DOES 1 through 500,

Defendants.

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EX PARTE MOTION

Plaintiffs Verity Health System of California, Inc. ("VHS"), St. Vincent Medical Center ("St. Vincent"), St. Francis Medical Center ("St. Francis"), Seton Medical Center ("Seton," and together with St Francis and St. Vincent, the "Plaintiff Hospitals" or the "Hospitals"), and Verity Holdings, LLC, and the above-captioned debtors (collectively, the "Debtors" or "Plaintiffs"), hereby submit this *ex parte* motion (the "Motion") for the entry of an order allowing them to file under seal a certain Letter and Term Sheet (each, as defined below) related to their Complaint filed against Kali P. Chaudhuri, M.D., Strategic Global Management, Inc., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC (the foregoing also doing business as the KPC Group) and DOES 1 through 500 (collectively, the "Defendants"), pursuant to §§ 105(a) and

107(b), (c), and (d), Rule 9018, LBR 5003-2(c), and § 2.8(b) of the Court Manual.[1]

I.

STATEMENT OF FACTS

1. On August 31, 2018, the Debtors and certain related entities filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code. The above-captioned bankruptcy cases are jointly administered under Lead Case No. 2:18-bk-20151-ER [Docket No. 17] (the "Bankruptcy Cases").

2. In connection with the Bankruptcy Cases, the Debtors initiated a process to sell the Plaintiff Hospitals and related assets.

3. On August 13, 2018, Strategic Global Management, Inc. ("SGM") submitted an offer to purchase the Plaintiff Hospitals. In connection with the offer, SGM provided the Debtors with a letter regarding certain available liquidity (the "Letter"), which SGM designated as "highly confidential."

4. On January 8, 2019, SGM executed an Asset Purchase Agreement [Docket No. 1279, Ex. A] (as subsequently amended by Docket No. 2305-1, the "APA") to purchase the Plaintiff Hospitals and related assets.

5. On May 2, 2019, after briefing and a hearing, the Bankruptcy Court entered the *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Strategic Global Management, Inc. free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting Related Relief* [Docket No. 2306].

6. After the Debtors repeatedly requested SGM provide evidence of financing, on October 3, 2019, Defendants provided to Plaintiffs a non-binding discussion draft term sheet (the "Term Sheet"). SGM designated the Term Sheet as "highly confidential."

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, all "LBR" references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California, and all "Court Manual" references are to the Court Manual for the United States Bankruptcy Court for the Central District of California.

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7. Starting on November 20, 2019, the Debtors sent SGM correspondence regarding satisfaction of the conditions in the APA and the requirement to close the sale on December 5, 2019. After further correspondence and orders entered by the Bankruptcy Court requiring SGM to close on December 5, 2019 [*see* Docket Nos. 3723, 3724], SGM failed to close the sale. On December 17, 2019, the Debtors sent a notice to SGM citing various notices of breaches, and stating that the APA would terminate effective December 27, 2019.

8. On January 3, 2020, the Debtors filed the Complaint commencing the above-captioned adversary proceeding.

9. The Complaint includes one paragraph concerning the Letter and another paragraph concerning the Term Sheet. General counsel for SGM designated both the Letter and Term Sheet as "highly confidential," as set forth above. The Debtors request authority to file the Letter and Term Sheet under seal solely because of the request from SGM's general counsel, but expressly reserve the right to in the future to dispute the nature of the confidentiality. For purposes of the Complaint, the Debtors filed a version of the Complaint which redacts a majority of paragraph 42 that discusses the Letter and paragraph 80 that discusses the Term Sheet. Accordingly, the Debtors request authority to file the Letter and Term Sheet under seal and redact a majority of paragraphs 42 and 82 of the Complaint.

II.

REQUEST FOR SEALING

The Debtors request to file the Letter and Term Sheet under seal and redact a majority of paragraphs 49 and 80 of the Complaint pursuant to §§ 105(a) and 107(b), (c), and (d), Rule 9018, LBR 5003-2(c), and § 2.8(b) of the Court Manual.

Sections 107(b) and (c) authorize the Court to issue orders that will protect entities from potential harm caused by disclosure of confidential information. Specifically, §§ 107(b) and (c) provide:

> (b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
>
> > (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

> (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.
>
> (c) (1) The bankruptcy court, for cause; may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the. individual or the individual's property:
>
> (A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.
>
> (B) Other information contained in a paper described in subparagraph (A).

"Section 107(b) [makes] it mandatory for a [bankruptcy] court to protect documents falling into one of the enumerated exceptions." *In re Khan*, 2013 WL 6645436, at *3 (B.A.P. 9th Cir. Dec. 17, 2013). "Unlike § 107(b), § 107(c) gives the bankruptcy court broad discretion to protect an individual facing the subject circumstances. 2 COLLIER ON BANKRUPTCY ¶ 107.04[1]. Moreover, "[t]he types of information that can be protected by the court are unlimited." *Id*. at 4. On the whole, § 107 codifies "the rule that the public's right to access [information in a case is] far from absolute." *In re JMS Auto. Rebuilders, Inc*., 2002 WL 32817517, at *3 (C.D. Cal. Jan. 15, 2002).

Bankruptcy Rule 9018 sets forth the procedure by which a party may move for relief under § 107. In particular, Bankruptcy Rule 9018 states that the court "may make any order which justice requires (1) to protect the estate or any entity in respect of trade secrets [or] confidential … information…." Fed. R. Bankr. P. 9018. Because of the term "shall," "§ 107(b) [makes] it mandatory for a [bankruptcy] court to protect documents falling into one of the enumerated exceptions." *In re Khan*, 2013 WL 6645436, at *3; *see also Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994).

Additionally, even if one of these circumstances is not present, "§ 107(c) gives the bankruptcy court broad discretion to protect an individual facing the subject circumstances. Moreover, '[t]he types of information that can be protected by the court are unlimited.'" *Khan*, 2013 WL 6645436, at *4 (quoting 2 COLLIER ON BANKRUPTCY ¶ 107.04[1]).

Under § 2.8(b)(1) of the Court Manual, a party seeking to file documents under seal must not file the sealed documents until the Court has ruled on its motion to seal the information. The moving

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party "must describe the nature of the information that the party asserts is confidential (without disclosing the confidential information itself) and explain why the information should not be publicly disclosed." *Id.*

Here, SGM designated the Letter and Term Sheet as highly confidential. To avoid any litigation at this point, the Debtors hereby request authority to file the Letter and Term Sheet under seal at this time and, consequently, the unredacted version of the Complaint.[2] The Debtors also request authority to redact the majority of paragraphs 42 and 82 of the Complaint.

Notwithstanding the foregoing, Debtors will serve the Letter and Term Sheet and an unredacted version of the Complaint on counsel to the Defendants and certain constituents who have already received the Letter and Term Sheet per SGM's authority.

III.

CONCLUSION

WHEREFORE, the Plaintiffs respectfully request that this Court issue an order:

(a) Allowing the Plaintiffs to file the Letter and Term Sheet under seal, with service to the Defendants' counsel;

(b) Authorizing the Plaintiffs to redact the majority of paragraphs 42 and 82 of the Complaint; and

(c) Granting such other and further relief as the Court deems just and proper.

[2] The Debtors reserve all rights to seek an order unsealing the Complaint for any purpose, including taking the position that the Letter and/or Term Sheet are not confidential.

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Dated: January 3, 2020

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By */s/Tania M. Moyron*
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DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, submit this Declaration in support of the *Plaintiffs' Ex Parte Motion For an Order Allowing Plaintiffs To File Correspondence Related to Complaint Under Seal* (the "Motion"),[3] and hereby state as follows:

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. ("VHS"). Prior thereto, I served as VHS's Chief Operating Officer since August 2017.

2. I have personal knowledge of the facts stated in this Declaration, except as to those stated on information and belief, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

3. In connection with the Debtors' bankruptcy cases, the Debtors initiated a process to sell substantially all of their assets.

4. Strategic Global Management, Inc. ("SGM") provided the Debtors and Plaintiffs (in the above-captioned chapter 11 cases and adversary proceeding) a letter regarding certain available liquidity (the "Letter"), designated as "highly confidential." After the Debtors repeatedly requested SGM provide evidence of financing, on October 3, 2019, SGM and other affiliated entities provided to Plaintiffs a non-binding discussion draft term sheet (the "Term Sheet"), designated as "highly confidential."

5. On January 3, 2020, the Debtors filed the Complaint commencing the above-captioned adversary proceeding.

6. The Complaint includes one paragraph concerning the Letter and another paragraph concerning the Term Sheet. For purposes of the Complaint, the Debtors filed a version of the Complaint which redacts a majority of paragraph 42 that discusses the Letter and paragraph 82 that discusses the Term Sheet. Accordingly, and for the reasons set forth in the Motion, the Debtors request authority to file the Letter and Term Sheet under seal and redact a majority of paragraphs 49 and 80 of the Complaint.

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

[3] Capitalized terms not otherwise defined in this Declaration have the definitions set forth in the Motion.

Executed this 3rd day of January, 2020, in Los Angeles, California.



Richard G. Adcock

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