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Case No. 2:19−cv−10352−DSF[1]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*,[2] Debtors and Debtors in Possession.	On Appeal from the United States Bankruptcy Court for the Central District of California (Bankr. Lead Case No.: 2:18-bk-20151-ER)
STRATEGIC GLOBAL	**STRATEGIC GLOBAL MANAGEMENT, INC.'S NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THE PARTIES**

[1] SGM has filed a motion to consolidate District Court Appeal No. 2:19-cv-10352-DSF, with District Court Appeal Nos. 2:19-cv-10354-DSF and 2:19-cv-10356-DSF.

[2] The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv- 20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures – San Jose Dialysis, LLC 2:18-cv-20181-ER.

MANAGEMENT, INC.,

Appellant,

v.

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

Appellees.

TO: (1) COMPLY WITH GENERAL ORDER NO. 11-10, § 5, AND DISTRICT COURT LOCAL RULE 16-15; AND (2) PARTICIPATE IN ADR PROCESS

Date: [TBD]
Time: [TBD]
Judge: Hon. Dale S. Fischer
Place: Courtroom 7D, 350 W. First Street, Los Angeles, CA 90012

[Declaration Of Gary E. Klausner Filed Concurrently Herewith]

PLEASE TAKE NOTICE that Appellant Strategic Global Management, Inc. ("SGM") hereby submits the attached motion (the "Motion") requesting that the Court enter an order directing SGM and Verity Health Systems of California, Inc., et al (the "Debtors," and together with SGM, the "Parties") to: (1) comply with General Order No. 11-10, § 5, and District Court Local Rule ("LR") 16-15; and (2) participate in the Alternative Dispute Resolution ("ADR") process.

SGM and the Debtors are parties to three appeals currently pending in this Court; Case Nos. 2:19-cv-10352-DSF; 2:19-cv-10354-DSF; 2:19-cv-10356-DSF (collectively, the "Appeals"). As stated in the "*Notice[s] To Parties Of Court-Directed ADR Program*"[3] entered by the Court, Court policy is to "encourage settlement of civil litigation when such is in the best interest of the parties," and the Hon. Dale S. Fischer to whom the Appeals are assigned "is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation." (ADR Notices, 1).

As described more fully in the Memorandum of Points and Authorities, mediation is in the best interests of the Parties because, absent a settlement or resolution of the claims and disputes between SGM and the Debtors, the Parties will continue to litigate the pending Appeals and, depending upon the outcome of the Appeals, there may be further appellate litigation in the Ninth Circuit. Even after all Appeals are exhausted, the adjudication of these claims and disputes relating to the APA at the trial level will necessarily entail extraordinary amounts of time and expense by both Parties.

PLEASE TAKE FURTHER NOTICE that SGM brings the Motion pursuant to pursuant to Rule 8013(a) of the Federal Rules of Bankruptcy Procedure, Rules 7-4 and 16-15 of Chapter I of the Local Rules of the United

[3] Docket numbers 7, 6, and 5 in case numbers 2:19-cv-10352-DSF, 2:19-cv-10354-DSF, and 2:19-cv-10356-DSF respectively.

States District Court for the Central District of California, and General Order No. 11-10, § 5.

PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice of Motion, the concurrently filed Declaration of Gary E. Klausner in support of the Motion (the "Klausner Declaration"), the arguments of counsel, and any other admissible evidence brought before the Court at or before a hearing on the Motion.

PLEASE TAKE FURTHER NOTICE that SGM will serve this Notice of Motion, the Motion, and the Klausner Declaration on the parties set forth in the Proof of Service attached hereto. Pursuant to Federal Rule of Bankruptcy Procedure 8013(a)(3): (1) a response to the Motion must be filed within 7 days after service of the Motion; and (2) a reply to a response to the Motion must be filed within 7 days after service of the response.

PLEASE TAKE FURTHER NOTICE that, in the event that the Court sets a hearing on the Motion, SGM shall provide notice of entry of the order setting the hearing as directed by the Court.

Dated: January 8, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: */s/ Gary E. Klausner*

Gary E. Klausner
Counsel for Strategic Global Management

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant Strategic Global Management, Inc. ("SGM") moves (the "Motion") for an order directing SGM and Verity Health Systems of California, Inc., et al (the "Debtors," and together with SGM, the "Parties") to: (1) comply with General Order No. 11-10, § 5, and District Court Local Rule ("LR") 16-15; and (2) participate in the Alternative Dispute Resolution ("ADR") process, and respectfully represents as follows:

I. INTRODUCTION AND STATEMENT OF FACTS

A. Relevant Background Regarding Appeals

SGM and the Debtors are parties to three appeals currently pending in this Court; Case Nos. 2:19-cv-10352-DSF; 2:19-cv-10354-DSF; 2:19-cv-10356-DSF (collectively, the "Appeals"). Specifically, SGM has appealed the Bankruptcy Court's:

- (A) "*Order Granting "Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding that the Sale Is Free and Clear of Conditions Materially Different than Those Approved by the Court; (III) Finding that . . . "* [Bankr. Doc. No. 3611] entered on November 14, 2019 (the "November 14 Order");
- (B) "*Order (1) Finding that SGM Is Obligated to Promptly Close the SGM Sale Under Sec. 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors' Motion for a Continuance of the Hearing to Approve the Disclosure Statement*" [Bankr. Doc. No. 3633] entered on November 18, 2019 (the "November 18 Order"); and
- (C) "*Order (1) Finding that SGM Is Obligated to Close the SGM Sale by No Later Than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion for Approval of Disclosure Statement"* [Bankr. Doc. No.

3724] entered on November 27, 2019 (the "November 27 Order", and collectively, the "Orders").

The Appeals all relate to disputes and controversies between the Debtors and SGM in connection with: (1) the "Asset Purchase Agreement" dated January 8, 2019 [Bankr. Doc. No. 2305] (the "APA") for the sale of four hospitals (the "Hospitals"), approved by an order of the Bankruptcy Court entered on May 2, 2019 [Bankr. Doc. No. 2306] (the "Sale Order"); and (2) whether the Debtors satisfied all of the conditions for SGM to be obligated to close the sale (the "Sale") of the Hospitals pursuant to the APA on December 5, 2019.

The Official Committee of Unsecured Creditors ("Committee") in the Debtors' bankruptcy cases has intervened in Case No. 2:19−cv−10352−DSF, and has requested permission to intervene in the other two appeals. This Motion will be served on SGM and the Committee

On December 6, 2019, the Court entered the "*Notice[s] To Parties Of Court-Directed ADR Program*"[4] (the "ADR Notices"), stating that it is Court's policy to "encourage settlement of civil litigation when such is in the best interest of the parties," and the Hon. Dale S. Fischer to whom the Appeals are assigned "is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation." (ADR Notices, 1).

On December 20, 2019, the Court entered three orders denying the Debtors motions to dismiss each of the Appeals.[5]

The resolution of the Appeals, or any one of them, will have a significant impact on the adjudication of the disputes and controversies between the Parties. The Debtors contend that SGM is in breach of the APA, and has purported to

[4] Docket numbers 7, 6, and 5 in case numbers 2:19-cv-10352-DSF, 2:19-cv-10354-DSF, and 2:19-cv-10356-DSF respectively.

[5] Docket numbers 19, 16, and 14 in case numbers 2:19-cv-10352-DSF, 2:19-cv-10354-DSF, and 2:19-cv-10356-DSF respectively.

terminate the APA effective December 27, 2019. SGM disputes the Debtors' claims and has consistently reserved all of its rights regarding the APA and its claims against the Debtors. On January 3, 2020, the Debtors filed a Complaint against SGM and other parties and initiated an adversary proceeding in the Bankruptcy Court regarding claims relating to the APA.

The November 14, November 18, and November 27 Orders.

The November 14 Order approved a settlement and compromise between the Debtors and the California Attorney General ("AG") – which SGM opposed by, among other things, filing its objection [Bankr. Doc. No. 3582] (the "SGM Objection") to the Debtors' proposed form of order granting the "*Debtors' Emergency Motion [For Order] Enforcing the Order Authorizing the Sale . . . .*" [Bankr. Doc. No. 3188]. The November 14 Order and the subsequent November 18 Order both involved the question of whether the Debtors had satisfied the conditions set forth in Section 8.6 of the APA. Accordingly, any determination by this Court that the November 14 and November 18 Orders, or either of them, were in error will substantially affect the outcome of any litigation between the Parties because, among other reasons, the satisfaction of the conditions set forth in Section 8.6 is a prerequisite to the Debtors' requiring SGM to close the APA.

Similarly, the reversal or vacation of the November 27 Order would also have a significant impact on the adjudication of the claims and disputes between the Parties because that order, entered *sua sponte*, purported to obligate SGM to close the APA transaction on December 5, 2019; and SGM's failure to close on that date was a basis for the Debtors' purported termination of the APA on December 27, 2019.

B. The ADR Process, And Mediation Is In The Best Interest Of All Parties.

Mediation is in the best interests of the Parties because, absent a settlement or resolution of the claims and disputes between SGM and the Debtors, the Parties will continue to litigate the pending Appeals and, depending upon the outcome of

the Appeals, there may be further appellate litigation in the Ninth Circuit. In addition, mediation of the Appeals will likely impact the law suit which the Debtors filed against SGM and other defendants on January 3, 2020, which is based on SGM's alleged breach of the APA by failing to close the sale on December 5, 2019. By letter dated January 3, 2020, a copy of which is attached as **Exhibit A** to the Declaration of Gary E. Klausner, counsel for SGM (1) requested that the Debtors agree to participate in an ADR process consistent with the Court's ADR Notices, and (2) gave notice to Debtors counsel that this motion would be filed on or after January 6, 2020. As of the filing of this motion, SGM has not received any response to SGM's counsel's letter of January 3, 2020.

For all of the foregoing reasons, SGM believes that it is in the best interests of the Parties to participate in an alternative dispute resolution ("ADR") process, either before a judicial officer or a private mediator selected by the Parties, to see whether a consensual resolution of their claims and disputes can be achieved.

II. ARGUMENT

A. THE ADR NOTICES, LR 16-15, AND GENERAL ORDER NO. 11-10, § 5, REQUIRE THE PARTIES TO PARTICIPATE IN THE ADR PROCESS.

The Court entered the ADR Notices, stating that the Hon. Dale S. Fischer to whom the Appeals are assigned to "is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation . . . . General Order No. 11-10, § 5." (ADR Notices, 1). The ADR Notices also provide that, "unless exempted by the trial judge, parties in all civil cases must participate in an ADR process before trial . . . . L.R. 16-15.1." (ADR Notices, 1).

LR 16-15.1 provides that the ADR procedures set forth in LR 16-15 are "mandatory," "unless exempted by the trial judge." *See* LR 16.15.1. Further, Section 5 of General Order No. 11-10 provides that:

> With the exception of those case types exempted in section 4.5 above and cases involving a party who is not represented by counsel (*see* section 4.6), all civil cases, which are assigned to judges participating in the Court-Directed ADR Program, are presumptively referred to the Mediation Panel or a private dispute resolution process.

General Order No. 11-10, § 5. Section 4.5 of General Order No. 11-10 contains no exception for bankruptcy appeals. *See* General Order No. 11-10, § 4.5 (" . . . shall not be referred to the Mediation Panel (a) habeas corpus and extraordinary writs; (b) immigration and naturalization; (c) prisoner civil rights; (d) social security; (e) petitions to enforce IRS summonses."); *contra* LR 16-2 (unlike in other contexts where bankruptcy appeals may be exempted from District Court requirements; for example, LR 16-2 where " . . . Court need not issue a scheduling order or hold a Final Pretrial Conference . . . (e) Appeals from the bankruptcy court[.]").

The plain language of the ADR Notice, LR 16-15, and General Order Section 5 (and Judge Fischer's adoption of the requirements thereof), require the Parties to participate in the ADR Process, in an attempt to resolve their issues and disputes relating to the APA and Appeals. As a result, this Court should enter an order specifically directing the parties to promptly commence the ADR process.

B. REQUIRING THE PARTIES TO PARTICIPATE IN THE ADR PROCESS IS CONSISTENT WITH THE POLICIES OF THE DISTRICT COURT AND THE NINTH CIRCUIT COURT OF APPEALS, TO REQUIRE/ ENCOURAGE THE PARTIES TO ENGAGE IN A FORMAL ADR PROCESS.

Even putting aside the fact that the ADR Notices require that the Parties attempt to resolve their disputes related to the Appeals through the ADR process, it is the policy of the District Court and the Ninth Circuit to require that all civil matters, including those involving appeals of trial court orders, engage in a formal ADR Process.

In fact, the ADR Notices, in which the Court notified the Parties to the Appeals of the requirement that they comply with LR 16-15.1 provide that:

> "It is the ***policy of this Court to encourage settlement of civil litigation when such is in the best interest of the parties***. The Court favors any reasonable means, including [ADR] to accomplish this goal."

See (ADR Notice, 1). The District Courts' policy of encouraging parties to engage in formal settlement negotiations, coupled with the fact that the ADR Notices were served on the Parties, suggests that LR 16-15 applies to the Appeals of the November 14, November 18, and November 27 Orders.

Indeed, that policy is consistent with the policy of the Ninth Circuit Court of Appeals, which provides for a mediation process in connection with Ninth Circuit appeals. *See* https://www.ca9.uscourts.gov/mediation/ (A Message From The Chief Judge, "For over twenty years, the Ninth Circuit Court of Appeals has operated a court mediation and settlement program . . . . The court offers this service, at no cost, because it helps resolve disputes quickly and efficiently and can often provide a more satisfactory result than can be achieved through continued litigation. Each year the mediation program facilitates the resolution of hundreds of appeals."); *Nw. Env't Advocates v. U.S. E.P.A.*, 340 F.3d 853 (9th Cir. 2003), as amended (Sept. 15, 2003) ("On September 17, 2002, the parties were referred to the Ninth Circuit Mediation Program to explore a settlement. After extensive discussions, they reached a settlement. The partie[s'] joint motion to enter the attached stipulated consent decree is GRANTED.").

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III. CONCLUSION

For the foregoing reasons, SGM respectfully requests that the Court enter an order requiring the Parties to (1) comply with General Order No. 11-10, § 5, and LR 16-15; and (2) participate in the ADR process.

Dated: January 8, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: */s/ Gary E. Klausner*
Gary E. Klausner
Counsel for Strategic Global Management, Inc.

CERTIFICATE OF COMPLIANCE

1. This Motion complies with the page limitation requirements of Fed. R. Bankr. P. 8013(f)(3) and District Court Local Rule 11-6 because, excluding the parts of the Motion excepted by Fed. R. Bankr. P. 8013(a)(2)(C), this Motion contains 9 pages.

2. This Motion complies with the typeface requirements of Fed. R. Bankr. P. 8015(a)(5) and the type-style requirements of Fed R. Bankr. P. 8015(a)(6) because the document was prepared in the proportionally spaced 14-point Times New Roman font.

Dated: January 8, 2020

/s/ Gary E. Klausner
GARY E. KLAUSNER

CERTIFICATE OF SERVICE

1. I hereby certify that on January 8, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Central District of California using the CM/ECF system.

2. I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.

3. I further certify that some of the parties of record to this appeal may not have not consented to electronic service. I have served the foregoing documents by the means set forth below:

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Dated: January 8, 2020

/s/ Gary E. Klausner
GARY E. KLAUSNER