Docket #0022 Date Filed: 1/22/2020

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Attorneys for the Chapter 11 Debtors and Debtors In Possession

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 ASC, 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. Judge Ernest M. Robles

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

DEBTORS' OPPOSITION TO STRATEGIC GLOBAL MANAGEMENT, INC.'S EMERGENCY MOTION TO STAY ADVERSARY PROCEEDING

[RELATED TO DOCKET NO. 19]

Hearing Date and Time:
Date: February 11, 2020
Time: 10:00 a.m.
Place: Courtroom 1568
255 E. Temple St.
Los Angeles, CA 90012

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VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT DIALYSIS CENTER, INC., 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, and 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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Verity Health System of California, Inc. and the affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Cases"), hereby file this opposition (the "Opposition") to Strategic Global Management, Inc.'s ("SGM") request for an emergency hearing (the "Emergency Motion") to consider its request to stay Adversary Proceeding No. 2:20-ap-01001-ER (the "Adversary Proceeding").[1] In support of the Opposition, the Debtors respectfully request that the Court take judicial notice of the pleadings and filings in these Cases concerning the sale (the "SGM Sale") of certain of the Debtors' assets to SGM, and respectfully state as follows:

I.

INTRODUCTION

Consistent with SGM's pattern of delay, SGM requests an "emergency" hearing, so that the Court may consider SGM's motion to bring the Adversary Proceeding to a screeching halt while it pursues its frivolous appeals. The fundamental problem with SGM's request is that there is no "emergency," even as explicitly described by SGM. As its basis for requesting an emergency hearing, SGM asserts that it must file and serve a response (the "Response") to Debtors' complaint (the "Complaint") on or before February 5, 2020—20 days from now and 33 days after counsel for SGM received notice of the Complaint by ECF, email, and first class mail. *See* Docket No. 3942, Exs. H, I. The foregoing falls woefully short of establishing why a hearing is required on less than 48 hours, as required by LBR 9075-1(a)(2)(B). As significantly, a filing deadline does not require an emergency hearing—it merely requires SGM, like any other litigant, to file a response. The filing of the Response does not preclude SGM from filing its motion to stay the Adversary Proceeding on regular notice or shortened notice under LBR 9075-1(b).

The evidence in support of the Motion demonstrates that the asserted "emergency" is self-created and, in fact, strategic. SGM could have filed the Motion on regular notice yesterday, on January 15th. Instead, SGM waited until January 14th to request from the Debtors a 30-day

[1] SGM incorrectly filed the Motion in Lead Case No. 2:18-bk-20151-ER instead of the Adversary Proceeding, so the Debtors have filed the Opposition in the Lead Case to be able to link the Opposition to the Motion through CM/ECF.

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extension of its Response without a legitimate basis. The Debtors timely responded the next day, on January 15th, and offered SGM a 7-day extension as a professional courtesy. SGM could have agreed to the extension and filed the Motion on regular notice on January 22. Apparently the extension was not satisfactory to SGM.

The Debtors respectfully request that the Court deny SGM's request for emergency relief. The Debtors should not be required to divert their efforts from stabilizing operations at the hospitals (the "Hospitals") and finding solutions to the problems that SGM created by failing to close, particularly after the tremendous harm SGM caused the Debtors and their estates.

II.

BACKGROUND FACTS

A. General Background

1. On August 31, 2018, ("Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Cases"). By entry of an order, the Cases are currently being jointly administered before the Bankruptcy Court. [Docket No. 17]. Since the Petition Date, the Debtors have been operating their businesses as debtors in possession pursuant to §§[2] 1107 and 1108.

B. The SGM Sale

2. On January 17, 2019, the Debtors filed the *Motion for the Entry of (I) an Order (i) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 1279] (the "Sale Motion").

[2] Unless otherwise noted, all references to "§" and "section" herein are to sections of the Bankruptcy Code; all references to "Bankruptcy Rules" are to provisions of the Federal Rules of Bankruptcy Practice; all references to "LBR" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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3. On May 2, 2019, the Bankruptcy Court entered an order granting the Sale Motion and approving the sale (the "Sale Order") of the Hospitals and related assets to SGM. *See* Docket No. 2306.

4. On September 30, 2019, the Debtors filed a motion (the "Enforcement Motion"), which sought (i) entry of an order enforcing the Sale Order, (ii) a finding that the Sale was free and clear of certain additional conditions imposed by the Attorney General, and (iii) a finding limiting the Sale to only those conditions to which SGM contractually agreed to assume in Schedule 8.6 of the Asset Purchase Agreement (the "APA"). [Docket No. 3188.] On October 10, 2019, SGM filed a statement in support of the Enforcement Motion expressly requesting that the Bankruptcy Court enter an order granting the Enforcement Motion. [Docket No. 3356.] On November 14, 2019, the Bankruptcy Court entered an order granting the Enforcement Motion. [Docket No. 3611.]

5. On November 18, 2019, the Bankruptcy Court entered an order finding that SGM was obligated to promptly close the sale under § 8.6 of the APA, provided that all other conditions to closing had been satisfied. [Docket Nos. 3632 & 3633.]

6. On November 27, 2019, the Bankruptcy Court entered an order finding SGM was obligated to close the Sale by no later than December 5, 2019. [Docket Nos. 3723 & 3724.]

7. SGM failed to close the Sale on or before December 5, 2019.

C. The Adversary Proceeding Against SGM and its Alter Egos.

8. On January 3, 2020, the Debtors filed the Complaint against SGM and its alter egos, which commended the Adversary Proceeding. The Complaint asserts claims arising from SGM's conduct with respect to the APA and the SGM Sale, including breach of contract, promissory fraud, and tortious breach of contract based on SGM's and the other defendants' breaches of the implied covenant of good faith and fair dealing.

9. On January 13, 2020, the Debtors served the Complaint on the defendants, including SGM.

10. As set forth in the Motion, SGM requested a 30-day extension of its Response to the Complaint on January 14, 2020. The Debtors informed SGM that they were willing to grant

SGM a 7-day extension. *See* Mot. Ex. 2.

III.

ARGUMENT

Emergency motions are disfavored and granted only under a set of well-defined, extraordinary circumstances. *See In re Intermagnetics Am., Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989) ("Given the value our system places on the adversarial process, it is not surprising that the opportunities for legitimate ex parte applications are extremely limited."); *U.S. v. Real Property Located at 22 Santa Barbara Dr.*, 264 F.3d 860, 870 (9th Cir. 2001) ("ex parte proceedings are appropriate only in a narrow set of circumstances"). A movant demonstrates a basis for emergency relief if (i) the evidence shows irreparable prejudice or harm if the motion is heard on regular notice, and (ii) the moving party is without fault in creating the crisis that requires ex parte relief. *See Mission Power Eng'g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 494 (C.D. Cal. 1995). Thus, the Local Bankruptcy Rules provide that an emergency motion must be accompanied by declaration evidence that (i) justifies the setting of a hearing on less than 48 hours' notice and (ii) supports the granting of the motion of itself on the merits. *See* LBR 9075-1(a)(4).

The Motion should be denied because SGM did not submit sufficient evidence under LBR 9075-1(a) to demonstrate cause for emergency relief. Rather the evidence in support of the Motion establishes that SGM will suffer no injury—even if the relief is brought on regular notice—and has created the purported emergency on account of its own delay.

A. SGM's Own Delay Is the Cause of the Alleged Emergency

"Ex parte applications are not intended to save the day for parties who have failed to present requests when they should have, and should not be used as a way to 'cut in line' ahead of those litigants awaiting determination of their properly noticed and timely filed motions." *In re Intermagnetics Am., Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989); *see also IFPS Corp. v. Carrillo*, No. 14-00509, 2015 WL 13678978, at *1 (D. Nev. Nov. 25, 2015) ("The relevant inquiry is not whether the opposing party was at fault with respect to the underlying dispute, but rather 'it is the creation of the crisis—the necessity for bypassing regular motion procedures—that requires

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explanation.'") (quoting *Mission Power Eng'g Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 493 (C.D. Cal. 1995)). As the District Court for the Central District of California has explained,

> merely showing that trial is fast approaching and that the opposing party still has not answered crucial interrogatories is insufficient to justify ex parte relief. The moving party must also show that it used the entire discovery period efficiently and could not have, with due diligence, sought to obtain the discovery earlier in the discovery period.

Mission Power Eng'g Co., 883 F. Supp. at 493.

SGM frustrated the Debtors' efforts to avoid a hearing on less than 21-days' notice. The Debtors' offer to extend the responsive deadline by 7 days afforded SGM an opportunity to file the Motion on regular notice (by January 22) and obtain a ruling before the extended responsive deadline. The declaration in support of the Motion (the "Klausner Declaration") makes no mention of the impact of the Debtors' 7-day extension offer on the need for expedited relief. *See* LBR 9075-1(a)(4) (requiring that an emergency motion be accompanied by a declaration that "justifies the setting of a hearing on less than 48 hours-notice"). On this basis, alone, the evidence in support of the Motion is inadequate because it fails to explain why SGM refused the extension.

Further, the Motion smacks of gamesmanship based on the limited record established by SGM. SGM laid-out its litigation strategy in its January 14 letter (the "Letter"): the Debtors must accede to a 30-day extension by January 15 or SGM would move to stay the Adversary Proceeding. *See* Mot., Ex. 1 ("If we do not have Verity's agreement at that time then we will ask the Court to hear the motion on an expedited basis."). Yet, SGM's alleged grounds for expedited relief—that a hearing on 21-days' notice was not possible before the February 5 Response deadline—was not extant as of SGM's January 14 Letter. Further, SGM could have filed its Motion on regular notice the same day the Debtors did not unconditionally agree to an extension of the responsive deadline. Yet, SGM inexplicably delayed the filing by one day, and ensured that the Motion would fall a day-short of the 21-day regular notice period. *See Cardoza v. Bloomin' Brands, Inc.*, 141 F. Supp. 3d 1137, 1141 (D. Nev. 2015) ("Often times, the emergency motion itself is fully developed, well-researched, and polished. Such motions carry with them the

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strong implication that the movant is attempting to game the system by providing itself proper time to present its positions to the Court but depriving the opposing party of a reasonable opportunity to respond, effectively becoming an *ex parte* motion by which the opposing party has 'notice' of its filing but no real chance to adequately respond."). Under these circumstances, the Court may deny the requested relief "outright." *See id.* at 1143 ("When an attorney knows of the existence of a dispute and unreasonably delays in bringing that dispute to the Court's attention until the eleventh hour, the attorney has created the emergency situation and the request for relief may be denied outright.").

B. The Motion Does Not Demonstrate Irreparable Prejudice

A motion for emergency relief must address the prejudice the movant will suffer if relief is granted on regular notice. *See Cardoza*, 141 F. Supp. 3d at 1142-1143 ("When such prejudice is absent, sufficient justification for bypassing the default briefing schedule does not exist and the request may be properly decided on a non-expedited basis."). An approaching case deadline is inadequate to demonstrate irreparable prejudice. *See Mission Power Eng'g Co.*, 883 F. Supp. at 493 ("For example, merely showing that trial is fast approaching and that the opposing party still has not answered crucial interrogatories is insufficient to justify ex parte relief. The moving party must also show that it used the entire discovery period efficiently and could not have, with due diligence, sought to obtain the discovery earlier in the discovery period.").

SGM fails to demonstrate that its obligation to file a responsive pleading by February 5—assuming SGM rejected an extension to February 12—would cause irreparable harm. The Klausner Declaration is devoid of any description of the potential harm that may be visited upon SGM if it files a responsive pleading. Indeed, the Klausner Declaration does not reference the February 5 responsive pleading deadline a single time. The Letter offers no further insight, and makes only a disputed claim that the Court is without jurisdiction to hear the Adversary Proceeding given SGM's appeals. It strains credulity that SGM's obligation to prepare responsive pleadings is an imposition rising to the level of irreparable prejudice. Regardless, the Motion should be denied because SGM fails to address whether any irreparable prejudice is possible under these circumstances.

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IV.

RESERVATION OF RIGHTS

This Opposition relates solely to SGM's request for an emergency hearing on the Motion. As to the underlying relief requested in the Motion, SGM has not demonstrated an adequate basis to stay the Adversary Proceeding, and the Debtors reserve all rights with respect to such arguments, which will be made in a separate opposition to the Motion. Accordingly, nothing contained herein is intended or shall be construed as: (i) a waiver of the Debtors' or any appropriate party in interest's rights to dispute, object to, or otherwise challenge the substantive relief sought in the Motion; or (ii) a waiver of any claims, causes of action, defenses, objections, or other rights to respond which may exist against SGM and the other defendants.

V.

CONCLUSION

Based upon the foregoing, the Debtors respectfully request that this Court enter an Order (i) denying SGM's request for an emergency hearing on the Motion, (ii) setting the Motion for hearing on regular notice and setting a briefing schedule concerning the issues raised in the Motion, and (iii) granting such other relief as the Court deems just and proper under the circumstances.

Dated: January 16, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

By *__/s/ Tania M. Moyron__*
Tania M. Moyron
Attorneys for Verity Health Systems of California, Inc., *et al.*

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: 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*): **DEBTORS' OPPOSITION TO STRATEGIC GLOBAL MANAGEMENT, INC.'S EMERGENCY MOTION TO STAY ADVERSARY PROCEEDING**

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*) **January 22, 2020**, 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:

- Gary E Klausner gek@lnbyb.com
- Jeffrey S Kwong jsk@lnbyb.com, jsk@ecf.inforuptcy.com
- Samuel R Maizel samuel.maizel@dentons.com, alicia.aguilar@dentons.com;docket.general.lit.LOS@dentons.com;tania.moyron@dentons.com;kathryn.howard@dentons.com;joan.mack@dentons.com;derry.kalve@dentons.com
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- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) **January 22, 2020**, 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*) **January 22, 2020**, 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.

USBC Central District of California
Hon. Ernest M. Robles
Edward R. Roybal Federal Building and US Courthouse
255 East Temple Street, Suite 1560
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.

January 22, 2020	Christina O'Meara	/s/Christina O'Meara
Date	*Printed Name*	*Signature*

2. SERVED BY UNITED STATES MAIL:

Gary E. Klausner Strategic Global Management, Inc. c/o Levene, Neale, Bender, Yoo & Brill 10250 Constellation Blvd. Suite 1700 Los Angeles, CA 90067	Chief Executive Officer KPC Healthcare Holdings, Inc. 9 KPC Pkwy, Suite 301 Corona, CA 92879
William E. Thomas KPC Health Plan Holdings, Inc. 9 KPC Parkway, Suite 301 Corona, CA 92509	Chief Executive Officer KPC Health Plan Holdings, Inc. 9 KPC Parkway, Suite 301 Corona, CA 92879
Corporation Service Company KPC Healthcare, Inc. 112 North Curry Street Carson City, NV 89703	KPC Healthcare Holdings, Inc. ATTN: Corporation Service Co. DBA CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive Suite 150N Sacramento, CA 95833
Chief Executive Officer KPC Healthcare, Inc. 1301 North Tustin Avenue Santa Ana, CA 92705	KPC Global Management, LLC ATTN: Corporation Service Company DBA CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive Suite 150N Sacramento, CA 95833
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