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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	On Appeal from the United States Bankruptcy Court for the Central District of California Bankr. Lead Case No.: 2:18-bk-20151-ER

[1] This appeal (2:19-cv-10352-DSF) has been consolidated with the following related appeals: 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.

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Possession.

STRATEGIC GLOBAL MANAGEMENT, INC.,

Appellant,

v.

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

Appellees.

DECLARATION OF GARY E. KLAUSNER IN SUPPORT OF STRATEGIC GLOBAL MANAGEMENT, INC.'S MOTION FOR ORDER: (1) ALLOWING APPELLANT ACCESS TO THE DOCUMENT DESCRIBED AS "PLAN B", WHICH WAS FILED UNDER SEAL WITH THE BANKRUPTCY COURT, FOR USE IN CONNECTION WITH APPELLANT'S OPENING BRIEF, (2) EXTENDING THE DEADLINE FOR THE FILING OF APPELLANT'S OPENING BRIEF AND (3) CLARIFYING THE BRIEFING 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

I, Gary E. Klausner, declare as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

2. I am a partner of Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB"), bankruptcy counsel for Strategic Global Management, Inc. ("SGM"). I am licensed to practice law in the State of California and before this court.

3. I submit this Declaration in support of SGM's "*Motion For Order: (1) Allowing Appellant Access To The Document Described As "Plan B", Which Was Filed Under Seal With The Bankruptcy Court, For Use In Connection With Appellant's Opening Brief, (2) Extending The Deadline For The Filing Of Appellant's Opening Brief And (3) Clarifying The Briefing Process*" (the "Motion"). Unless otherwise indicated, all capitalized but undefined terms herein shall have the same meanings ascribed to them in the Motion.

The Appeals

4. SGM and the Debtors are parties to consolidated appeals currently pending in this Court. Specifically, SGM has appealed the Bankruptcy Court's orders dated: (1) November 14, 2019 [Bankr. Doc. No. 3611] (the "November 14 Order"); (2) November 18, 2019 [Bankr. Doc. No. 3633] (the "November 18 Order"); and (3) November 27, 2019 [Bankr. Doc. No. 3724] (the "November 27 Order, and together with the November 14 and 18 Orders, the "Orders").

5. On December 20, 2019, the Court entered three orders denying the Debtors' motions to dismiss each of the Appeals.[3]

6. The Committee has intervened in all three of the Appeals pursuant to this Court's order of January 17, 2020.

[3] 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.

7. On December 6, 2019, the Court entered the "*Notice[s] To Parties Of Court-Directed ADR Program.*"[4] SGM filed motions to compel the Debtors and Committee to participate in the ADR Program on January 8, 2020 which is currently pending.

The Plan B Document Filed Under Seal with the Bankruptcy Court

8. On Friday November 22, 2019 at 3:12 p.m., the Debtors filed an "*Ex Parte* Motion . . . To File 'Plan B' Of Their Status Report Under Seal" [Bankr. Doc. No. 3678]. A true and correct copy of the Plan B Motion is attached as **Exhibit "1"** hereto.

9. The Bankruptcy Court entered its order granting leave to file Plan B under seal. A true and correct copy of the Plan B Order is attached as **Exhibit "2"** hereto.

10. At the November 26, 2019 Status Conference, the Bankruptcy Court announced that it had reviewed the materials that the Debtors had submitted and announced that SGM was obligated to close the sale on December 5, 2019. The Bankruptcy Court also made statements regarding closure of hospitals resulting from SGM's failure to close that had not been part of any publicly filed document in the Debtors' Chapter 11 cases.

11. The next day, the Bankruptcy Court, *sua sponte*, filed a Memorandum Decision and Order declaring that the Debtors had satisfied all conditions precedent to closing and that SGM was "obligated" to close the sale on December 5, 2019.

12. SGM timely appealed.

13. On December 13, 2020, SGM designated the Plan B Document in its Designation of Record on appeal from the November 27 Order [November 27 Appeal, Doc. No. 3812].

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[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.

14. By correspondence dated December 30, 2019, I requested that the Debtors stipulate to allow SGM to have access to the Plan B Document for use in the appeal. SGM agreed that the document could remain sealed. The Debtors refused. A true and correct copy of this correspondence is attached as **Exhibit "3"** hereto.

15. A true and correct copy of the Debtors' Letter, rejecting SGM's requested extension to file its opening brief is attached as **Exhibit "4"** hereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed January 23, 2020, at Los Angeles, California.

/s/ Gary E. Klausner
GARY E. KLAUSNER

EXHIBIT "1"

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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

DENTONS US LLP
601 South Figueroa Street, Suite 2500
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In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, 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
☒ 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.	**DEBTORS' *EX PARTE* MOTION FOR AN ORDER ALLOWING THE DEBTORS TO FILE "PLAN B" OF THEIR STATUS REPORT UNDER SEAL; DECLARATION OF RICHARD G. ADCOCK IN SUPPORT THEREOF** **[No Hearing Required Per Bankruptcy Rule 9018]**

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EX PARTE MOTION

Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned Chapter 11 bankruptcy cases (collectively, the "Debtors"), hereby submit this *ex parte* motion (the "Motion") for the entry of an order allowing them to file "Plan B" of their Status Report (defined *infra*), due November 24, 2019, under seal, pursuant to §§ 105(a) and 107(b), (c), and (d),[1] Rule 9018, LBR 5003-2(c), and § 2.8(b) of the Court Manual.

I.

STATEMENT OF FACTS

1. On November 19, 2019, the Debtors filed their *Motion To (A) Continue Hearing On Motion Of The Debtors For An Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting Procedures; (III) Notice And Objection Procedures For Confirmation Of Debtors' Plan, And (IV) Granting Related Relief; (B) Continue The Debtors' Reply Deadline With Respect To Disclosure Statement Objections, And (C) Use The November 26, 2019, 10:00 A.M. Hearing Date For A Status Conference On This Matter* [Docket No. 3644] (the "Continuance Motion"), which sought to continue the hearing set for approval of the *Disclosure Statement Describing Debtors' Chapter 11 Plan of Liquidation (Dated September 3, 2019)* [Docket No. 2994] (the "Disclosure Statement Hearing") and requested that the Court hold a status conference (the "Status Conference"), in lieu of the Disclosure Statement Hearing, to discuss the pending sale of certain of the Debtors' hospitals to Strategic Global Management, Inc. (the "SGM Sale" and "SGM" respectively).

2. On November 20, 2019, the Court entered an order [Docket No. 3646] (the "Order") (i) granting the Continuance Motion, (ii) continuing the Disclosure Statement Hearing, and (iii) scheduling the Status Conference on November 26, 2019, at 10:00 a.m. *See* Order at 2.

---

[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.

The Court also ordered that the Debtors file, by November 24, 2019, a "Status Report," which would discuss (a) the status of the closing of the SGM Sale and (b) the Debtors' plan for expeditiously resolving these cases in the event that the SGM Sale does not close ("Plan B"). *Id.*

3. As of the filing of this Motion, SGM has yet to provide the Debtors with specific information regarding their intentions for the SGM Sale.

4. Given that there is a possibility that the SGM Sale still may close, public statements regarding the requested Plan B may impact the SGM Sale. Moreover, public statements regarding Plan B may have an adverse impact on operations and employee morale. Given that the SGM Sale may close, the Debtors desire to not make these statements publicly unless absolutely necessary.

5. Consequently, the Debtors request authority to file the Status Report under seal. The Official Unsecured Creditors Committee (the "UCC") and lenders support the relief sought in this Motion.

II.

REQUEST FOR SEALING

The Debtors request to file their Status Report under seal pursuant to §§ 105(a) and 107(b), (c), and (d), Rule 9018, LBR 5003-2(c), and § 2.8(b) of the Court Manual.

The Court may issue orders that will protect entities from potential harm caused by disclosure of confidential information, including "confidential research, development, or commercial information." 11 U.S.C. §§ 107(b), (c); *see also* Fed. R. Bankr. P. 9018. Section 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.*, No. 01-05600, 2002 WL 32817517, at *3 (C.D. Cal. Jan. 15, 2002). 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*, No. 13-1297, 2013 WL 6645436, at *3 (B.A.P. 9th Cir. Dec. 17, 2013); *see also Video Software Dealers Ass'n v. Orion Pictures Corp.* (*In re Orion Pictures Corp.*), 21 F.3d 24, 27 (2d Cir. 1994) ("if the information fits any of the specified categories, the court is *required* to protect a requesting interested party and has no discretion to deny the application") (emphasis in original).

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Further, courts may seal privileged information to protect a filer. It is common for a court to seal information that is relevant to a narrow issue (here, Plan B), so as to not risk waiving it in whole as to trial or later litigation or allow a counterparty an undue advantage. *Ervine v. Warden*, 214 F. Supp. 3d 917, 921 (E.D. Cal. 2016) (finding "a compelling need to protect [a filer's] attorney/client privileged information so that it is not available to be used against him [later].").

Rule 9018 sets forth the procedure by which a party may move for relief to seal and states that the Court "may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development or commercial information." Fed. R. Bankr. P. 9018. 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 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.*

The Debtors seek to file Plan B under seal because:

i. The SGM Sale is still pending and the Debtors do not desire to adversely impact the SGM Sale by making public any strategic considerations in Plan B;

ii. Given the possibility that the SGM Sale may still close, the Debtors do not wish to further unnecessarily disrupt operations and employee morale by filing Plan B, if Plan B is not ultimately implemented; and

iii. The Debtors do not wish to waive privilege, broadcast their strategy, and/or file a document that contains confidential commercial information at such a sensitive juncture.

Applying § 107(b), Judge Sontchi stated that § 107(b) is not a "narrow exception, [but is] designed to adapt the common law rule to the business realities of Chapter 11" and that § 107(b) is a pretty strong statement by Congress that confidential information should be protected" for information that "[c]ompanies don't go around publishing, internally let alone externally." *In re Energy Future Holdings Corp.,* No. 14-10979 [Docket No. 2375] (Tr. of Hr'g before the Honorable Christopher S. Sontchi at 29:7-30:23) (Bankr. D. Del. Oct. 8, 2014) (available at

Docket 718-1 in these cases). The "business realities" here support the sealing of the Status Report from the public and parties that might wield it against the Debtors.

The Debtors will serve Plan B before the Status Conference to (i) counsel for the UCC; (ii) counsel for the indenture trustees for the Debtors' prepetition lenders, UMB Bank N.A., as Successor Master Trustee for the Master Indenture Obligations, Wells Fargo Bank National Association as Indentures Trustee for Series 2005 Revenue Bonds, U.S. Bank National Association, as Series 2015 and Series 2017 Note Collateral Agent and Note Trustee, Verity MOB Financing LLC, and Verity MOB Financing II LLC; (iii) other parties in interest per the Debtors' discretion (the "Disclosure Parties").

IV.

CONCLUSION

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

(a) Allowing the Debtors to file the Status Report under seal, with service to the Disclosure Parties; and

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

Dated: November 22, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
JOHN A. MOE, II
TANIA M. MOYRON

By /s/ *Tania M. Moyron*
Tania M. Moyron

Attorneys for Debtors

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DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, submit this Declaration in support of the *Debtors'* Ex Parte *Motion Allowing The Debtors To File Plan B Of Their Status Report Under Seal* (the "Motion"),[2] 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 extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, budgeting, disease management, and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. 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.

4. Given that there is a possibility that the SGM Sale still may close, public statements regarding the "Plan B" requested in the Status Report may impact the SGM Sale. Moreover, public statements regarding Plan B may have an adverse impact on operations and employee morale. Given that the SGM Sale may close, the Debtors desire to not make these statements publicly unless absolutely necessary.

5. As of the filing of the Motion, SGM has yet to provide the Debtors with specific information regarding their intentions for the SGM Sale.

6. The Debtors seek to file Plan B under seal because:

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

i. The SGM Sale is still pending and the Debtors do not desire to adversely impact the SGM Sale by making public any strategic considerations in Plan B;

ii. Given the possibility that the SGM Sale may still close, the Debtors do not wish to further unnecessarily disrupt operations and employee morale by filing Plan B, if Plan B is not ultimately implemented; and

iii. The Debtors do not wish to waive privilege, broadcast their strategy, and/or file a document that contains confidential commercial information at such a sensitive juncture.

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

Executed this 22nd day of November, 2019, in Los Angeles, California.

Richard G. Adcock

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EXHIBIT "2"

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Attorneys for the Chapter 11 Debtors and Debtors In Possession

FILED & ENTERED

NOV 22 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

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

Hon. Ernest M. Robles

ORDER GRANTING DEBTORS' EX PARTE MOTION FOR AN ORDER ALLOWING THE DEBTORS TO FILE "PLAN B" OF THEIR STATUS REPORT UNDER SEAL

[RELATES TO DOCKET NO. 3678]

Status Conference:

Date: November 26, 2019
Time: 10:00 a.m.
Location: Courtroom 1568, 255 E. Temple St., Los Angeles, CA

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The Court, having read and considered the *Debtors' Ex Parte Motion Allowing The Debtors To File "Plan B" Of Their Status Report Under Seal* (the "Motion") [Docket No. 3678]; it further appearing that proper notice of the Motion had been provided; and good and sufficient cause having been shown,

IT IS HEREBY ORDERED:

A. The Motion is GRANTED;

B. The Debtors may file Plan B (as defined in the Motion) under seal.

IT IS SO ORDERED.

###

Date: November 22, 2019

Ernest M. Robles
United States Bankruptcy Judge

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EXHIBIT "3"

From: Gary E. Klausner
Sent: Monday, December 30, 2019 1:34 PM
To: 'Maizel, Samuel R.'; Moyron, Tania M.; Martin, Sonia R. (sonia.martin@dentons.com)
Cc: Gary E. Klausner
Subject: Verity; Sealed Document

Dear Sam, Tania and Sonia;

I hope you have had a nice holiday.

The purpose of this email is to request your cooperation in providing SGM with access to the "Plan B" document which was filed with the Bankruptcy Court under seal, on or about November 25, 2019. That document is necessary for SGM's briefing in connection with the appeals currently pending in the U.S. District Court as well as the litigation which we anticipate regarding the Verity-SGM APA.
We are proposing that the Plan B document remain sealed in the Bankruptcy Court file, and that a copy of the document be provided to SGM subject to a stipulated order which will provide that SGM may use the document in any court filing, so long as the document remains "sealed", unless the Bankruptcy court or District Court orders otherwise. Your cooperation in agreeing to this process will avoid the expense and potential delay in seeking orders from the Bankruptcy court or District Court.

Please let me know if this procedure is acceptable.
Thanks

GARY E. KLAUSNER, Esq.
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EXHIBIT "4"

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January 16, 2020

VIA EMAIL

Gary E. Klausner
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Re: *In re Verity Health System of California, et al.*,
District Court Appeal Case Nos. 2:19-cv-10352-DSF,
2:19-cv-10354-DSF, 2:19-cv-10356-DSF

Dear Mr. Klausner:

This joint response to your letter, dated January 14, 2020, is being sent on behalf of the Debtors and the Creditors' Committee.

SGM's tactics are both transparent and misguided. SGM is attempting to stall the appeal and the adversary proceeding, while trying to force the Debtors to the table (yet again) to try to renegotiate the sale transaction that it broke apart, causing enormous hardship and damage to the Debtors and their constituents. Indeed, not only did SGM fail to close as required, it failed even to give the Debtors and constituents timely notice that it would not be closing and did not have the financial wherewithal to close as required months earlier when they could have stemmed some of the losses and pivoted more quickly. SGM continues to operate under the delusional belief that it might purchase some or all of the Debtors' hospitals at a reduced price. This will never happen because SGM has proven itself to be a bad actor, an unqualified bidder, and financially deficient.

Given the harm your clients have caused to the Debtors' hospitals and estates, and the nature of the bankruptcy cases (including the daily cash losses of $450,000), your request for a 30-day extension to file an opening brief is not reasonable and will prejudice the Debtors and the Committee. Further, as explained below, your proffered reasons for the request do not hold water and only highlight SGM's pattern of delay.

First, the fact that the motion to consolidate SGM's three appeals is scheduled to be heard on January 27, 2020, should not impact SGM's ability to file an opening brief more than ten days

later, on February 7, 2020.[1] Your clients have had months to prepare an opening brief. The motion to consolidate is unopposed, and is likely to be granted. Further, as you have repeatedly stated, the issues in the three appeals overlap significantly (although we do not agree that statement is accurate), so the briefing should not be impacted regardless of the outcome of the consolidation motion.

Second, the fact the Creditors' Committee's motion to intervene will be heard on January 27 supplies no basis for an extension for SGM to file its opening brief. Put simply, the presence or absence of the Committee as parties to the appeal will not impact the content of SGM's opening brief. In any event, SGM will have more than a week after the hearing to make any minor revisions to its brief based on the outcome of that motion.

Third, SGM's pending motion to compel mediation should have no impact on when SGM's opening brief is due, either. For the reasons stated in the oppositions filed yesterday, SGM's motion to compel mediation is not made in good faith and the Debtors and the Committee oppose it. But regardless of the District Court's ruling on that motion, the briefing on the appeal should proceed with alacrity.

Finally, the fact that SGM has not been given access to the Debtors' "Plan B" filing is wholly irrelevant. Your letter incorrectly presumes that SGM should receive a copy of the Plan B filing. Pursuant to the Bankruptcy Court's November 22, 2019 Order, however, that filing was made under seal and only certain constituents, defined as the Disclosure Parties in the motion, were given access to it, as you know. SGM was not one of the Disclosure Parties. SGM did not object to the motion nor appeal the order. If SGM believes that Order was incorrect, then its remedy was to bring a motion with the Bankruptcy Court long ago, which it failed to do. The Plan B filing had no connection with the orders that are the subject of this appeal, and should have no bearing on when SGM's opening brief is due.

Consequently, the Debtors and the Committee will not agree to your request for a 30-day extension. As a professional courtesy, however, the Debtors and the Committee will agree to a one week (7-day) extension of SGM's time to file an opening brief.

Very truly yours,



Sonia R. Martin

[1] Your letter incorrectly states that SGM's opening brief is due February 5. It is actually due February 7, which is 30 days after the docketing notice that the record has been transmitted or is electronically available. FRBP 8018(a)(1).

Mark Shinderman

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CERTIFICATE OF SERVICE

1. I hereby certify that on January 23, 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 have not consented to electronic service. I have served the foregoing documents by the means set forth below:

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Dated: January 23, 2020

/s/ Gary E. Klausner
GARY E. KLAUSNER