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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession	District Court Consolidated Case No.: 2:19-cv-10352-DSF Consolidated with Case Nos.: 2:19-cv-10354-DSF 2:19-cv-10356-DSF
STRATEGIC GLOBAL MANAGEMENT, INC. Appellant v. VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.* Appellees	Bankruptcy Court Lead Case No.: 2:18-bk-20151-ER Hon. Dale S. Fischer **DEBTORS' OPPOSITION TO STRATEGIC GLOBAL MANAGEMENT, INC.'S MOTION FOR ORDER: (1) GRANTING ACCESS TO PLAN B, FILED UNDER SEAL, (2) EXTENDING THE DEADLINE TO FILE APPELLANT'S OPENING BRIEF, AND (3) CLARIFYING THE BRIEFING PROCESS** Date: [TBD] Time: [TBD] Courtroom: 7D Location: 350 W. First Street Los Angeles, CA 90012

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Verity Health System of California, Inc. ("VHS"), and the above-referenced affiliated debtors and debtors-in-possession (the "Debtors") in the above-captioned chapter 11 cases (the "Bankruptcy Cases")[1] pending in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court") and the appellees herein, hereby submit this opposition (the "Opposition") to *Strategic Global Management, Inc.'s Notice of Motion and Motion for Order: (I) Allowing Appellant to Access 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"), filed by appellant, Strategic Global Management, Inc. ("SGM"). This Opposition is based on the appendix [Docket No. 3] (the "Appendix") previously filed in this appeal, and the Request for Judicial Notice (the "RJN") filed concurrently herewith.

I. Introduction

SGM has launched a creative discovery fight with the Debtors in its attempt to obtain a confidential document that the Bankruptcy Court ordered the Debtors to file under seal. The foregoing document is referred to as "Plan B" and relates to the disposition of the Debtors' Bankruptcy Cases assuming their assets were not purchased by SGM. The underlying purposes of the Motion are (i) to slow the proceedings in these consolidated appeals, and (ii) to gain tactical access to a

[1] The other Debtors in the chapter 11 cases, 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.

confidential document subject to an unappealed sealing order to which SGM did not object. For the reasons given below, SGM's efforts to slow the adversarial process should be rejected.

II. Background

A. The Bankruptcy Proceeding

1. On August 31, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[2] *See* App. at 3. The Cases are jointly administered before the Bankruptcy Court. [Docket No. 17][3]. Since the Petition Date, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. On the Petition Date, Debtor VHS, a California nonprofit public benefit corporation, was the sole corporate member of five Debtor California nonprofit public benefit corporations that formerly St. Vincent Medical Center ("SVMC"), O'Connor Hospital ("OCH"), and Saint Louise Regional Hospital ("SLRH"), and currently operates St. Francis Medical Center ("SFMC") and Seton Medical Center, including Seton Medical Center Coastside Campus ("SMC" and, together with SVMC and SFMC, the "Hospitals"). App. .at 4. As discussed below, the Debtors now are in the process of closing SVMC.

3. The sale of the Hospitals as going-concerns was one of the central objectives of the Debtors' Bankruptcy Cases. Such a sale would have preserved patient care in the Hospital's communities, protected thousands of jobs for the Hospitals' employees, allowed trade creditors to maintain going-forward business

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

[3] ECF docket references in the Bankruptcy Cases, jointly administered under Lead Case No. 2:18-bk-20151-ER, are hereafter referred to as "BDoc.".

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relationships with the Hospitals, and (with a $610 million purchase price) presented the most significant potential recovery to unsecured creditors in these Bankruptcy Cases.

B. The Debtors and Court Made Public Statements Concerning the Possible Impact the Failure of the Sale May Have on the Hospitals During the Sale Process

4. On January 17, 2019, the Debtors filed a motion [Docket No. 1279] (the "Sale and Bidding Procedures Motion") to approve the form of an asset purchase agreement and related "stalking horse" bidding procedures for the sale of the Hospitals, App. at 56, which the Bankruptcy Court approved (the "Bidding Procedures Order"). App. at 173. SGM served as the Stalking Horse Bidder under the terms of the Bidding Procedures Order. App. at 180.

5. The Bidding Procedures Order also approved that certain amended asset purchase agreement between certain of the Debtors and SGM ("APA"). App. at 209 - 840. Among the amended APA's material terms, was a heavily negotiated provision addressing the California Attorney General's (the "Attorney General") asserted right to review and approve the proposed Sale—Section 8.6 of the APA ("Section 8.6"). In addition, SGM agreed to continue to operate the Hospitals and abide by the vast majority of the conditions imposed by the Attorney General in 2015, as set forth in Schedule 8.6 to the APA ("Schedule 8.6").

6. On May 2, 2019, the Bankruptcy Court entered an order approving the sale (the "Sale") of the Hospitals to SGM pursuant to the terms of the APA. App. at 853.

7. The Attorney General undertook a review of the proposed Sale. In connection with the review, the Attorney General retained JD Healthcare, Inc. (the "Expert") to render recommendations on whether the Attorney General should approve the Sale, reject the Sale, or approve the Sale with conditions. *See* BDoc.

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2946 at 1. In August 2019, the Expert issued recommendations to approve the Sale with conditions that were materially different from the conditions in Schedule 8.6. *See id.* In response the Debtors and SGM submitted responses to the Attorney General concerning the impact of the Expert's proposal. In the response, the Debtors explained that "if the Debtors are unsuccessful in their efforts to cut off the conditions under Section 363 of the Bankruptcy Code and the sale to SGM does not proceed, the likely outcome is the closure of St. Vincent, Seton, and perhaps St. Francis." *Id.* at Ex. A. at 1-2

8. On September 25, 2019, the Attorney General consented to the Sale subject to certain conditions, some of which were materially different than those SGM developed and contractually agreed to in Schedule 8.6 (the "Additional Conditions"). App. at 991-1030.

9. As contemplated by the parties under Section 8.6. APA, on September 30, 2019, the Debtors filed a motion (the "AG Conditions Motion"), seeking (i) entry of an order enforcing the Sale Order, (ii) a finding that the Sale was free and clear of the Additional Conditions, and (iii) a finding limiting the Sale to only those conditions to which SGM contractually agreed to assume in Schedule 8.6. App. at 870. In the AG Conditions Motion, the Debtors explained that, "absent relief, the Debtors' sale to SGM of its four remaining hospitals [. . .] will collapse, which would result in loss of access to critical healthcare in underserved communities, the loss of thousands of jobs, and the loss of anticipated recoveries to creditors." *Id.* at 879-880 On October 10, 2019, SGM filed its statement in support of the AG Conditions Motion requesting that the Bankruptcy Court enter an order granting the AG Conditions Motion. *Id.* at 1156.

10. At the hearing on the AG Conditions Motion, the Court recognized that absent the Sale "there is no money to fund the continued operations of the Debtor, which would inure to the detriment of thousands of patients, thousands of employees,

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and not to mention the creditors in the case." App. at 1416. On October 23, 2019, the Court entered a memorandum of decision (the "AG Conditions Memorandum Decision") granting the AG Conditions Motion. App. at 1165.

C. The AG Conditions Order

11. After the Bankruptcy Court entered the AG Conditions Memorandum Decision, the Attorney General, the Debtors, and SGM engaged in discussions concerning a proposed form of order. While the Debtors and the Attorney General were able to reach an agreement on specific language to be contained in an agreed order (the "Proposed Order"), despite best efforts, the SGM frustrated the Debtors' effort to reach a three party consensus on an acceptable form or order. On November 8, 2019, the Debtors and the Attorney General filed a stipulation (the "Stipulation") and lodged the Proposed Order. App. at 1189, 1197, 1204. Pursuant to the Stipulation, (i) the Attorney General agreed to the Proposed Order authorizing the Sale free and clear of "Additional Conditions," (ii) the Debtors agreed to obtain a withdrawal of the AG Conditions Memo Decision, and (iii) the Attorney General agreed not to appeal the Proposed Order. App. at 1191.

12. On November 11, 2019, SGM filed an objection to the Proposed Order (the "SGM Objection") and lodged a competing order, which the Attorney General declined to accept. App. at 1208, 1228. On November 13, 2019, the Bankruptcy Court held a hearing, heard arguments, and overruled the SGM Objection as inconsistent with the requirements of Section 8.6. App. at 1252.

13. On November 14, 2019, the Bankruptcy Court entered the AG Conditions Order contemplated by the Stipulation. App. at 1318. On November 29, 2019, SGM appealed the AG Conditions Order. The AG Conditions Order appeal is docketed in this Court under this consolidated Case No. 19-10352-DSF.

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D. The Scheduling Order

14. On September 3, 2019, the Debtors filed a motion (the "Disclosure Statement Motion") requesting approval of the disclosure statement (the "Disclosure Statement") describing the Debtors' chapter 11 plan of liquidation (the "Plan"). *See* BDocs. 2993, 2994, 2995. The Disclosure Statement Motion was initially set for hearing on October 2, 2019. BDoc. 2998. However, the Debtors obtained several continuances of the hearing date due, *inter alia*, to the uncertainties surrounding the Sale. *See* BDocs. 3103, 3238, 3260, 3384, 3502, 3589, 3621 and 3644. The continuances were necessary because the closing of the Sale was a condition precedent to the effective date of the Plan. *See, e.g.*, 3621 at 6.

15. On November 15, 2019, the Debtors filed a motion to continue the hearing on the Disclosure Statement Motion. *See* BDoc. 3621. In the motion, the Debtors requested the continuance based on "formal correspondence material to the sale transaction" that the Debtors anticipated receiving from SGM. *See* BDoc. 3621 at 2.

16. On November 18, 2019, the Court entered an order on the Debtors' request to continue the disclosure statement deadlines (the "Scheduling Order"). App. at 1353-1354. The Scheduling Order granted the Debtors' request to continue the deadlines and further provided that SGM was obligated to promptly close the sale under Section 8.6. On November 29, 2019, SGM appealed the Scheduling Order. The Scheduling Order appeal is docketed in this Court under this consolidated Case No. 19-10352-DSF.

E. The Status Report, Plan B, and the Sealing Orders

17. On November 19, 2019, the Debtors filed another motion to continue the hearing on approval of the Disclosure Statement (the "Continuance Motion"). BDoc. 3644. In the Continuance Motion, the Debtors advised the Bankruptcy Court: "SGM orally communicated new information to the Debtors' representatives that

undermines the Debtors' confidence in a prompt close of the sale." *Id.* at ¶12. The Continuance Motion also included a request to use the Disclosure Statement hearing date as a status conference. *See id.*

18. On November 20, 2019, the Bankruptcy Court directed the Debtors to file a status report regarding the plan process and the Sale (the "Status Report Order"). BDoc. 3646. The Status Report Order at provides: "By no later than November 24, 2019, the Debtors shall file a Status Report, which shall discuss (a) the status of the closing of the Sale and (b) the Debtors' plan for expeditiously resolving these cases in the event that the Sale does not close." *Id.* at ¶5.

19. On November 24, 2019, the Debtors filed their status report (the "Status Report"). BDoc.3692. In connection with the Court's request relating to the Sale closing status, the Debtors filed a motion (the "Motion to Seal Correspondence") to file under seal correspondence with SGM (the "Correspondence"). BDoc. 3697. Due to the potentially deleterious impact that the Correspondence could have on employees and the Debtors' trade counterparties, the Debtors sought permission to file the Correspondence under seal. The Debtors explained that,

> the "business realities" support sealing the Correspondence from the public and parties that might seek to wield the contents of the Correspondence against the Debtors. The Debtors strongly believe that it would be highly prejudicial and harmful to the estates and their ability to close the SGM Sale at the stated purchase price—or maximize value for any sales under Plan B—should the Correspondence prematurely become a matter of public record.

Id. at 5-6.

20. SGM objected to the Motion to Seal Correspondence, but initially, the protest was based exclusively upon SGM's erroneous belief that the Debtor did not intend to include SGM's letter of November 22, 2019. BDoc. 3698. After discovering its error, SGM amended its initial objection in order to challenge the filing of any Correspondence, including its own letter of November 22, 2019. BDoc.

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3700. However, immediately following SGM's initial objection, the Bankruptcy Court entered an order (the "Correspondence Sealing Order") granting the Motion to Seal Correspondence and permitting the filing of the Correspondence under seal. BDoc 3699.

21. The Status Report Order also obligated the Debtors to apprise the Bankruptcy Court of the Debtors' alternative plans if the Sale did not close. However, the Debtors' contingency plans ("Plan B") contained commercially sensitive information which the Debtors thought inappropriate to share with the public generally and SGM, in particular.

22. Accordingly, on November 22, 2019, the Debtors filed a motion (the "Motion to Seal Plan B") to file Plan B under seal. BDoc. 3678. Plan B constitutes "the debtors plan for expeditiously resolving these cases in the event that the SGM Sale does not close." BDoc. 3678 at 3. The Debtors justified the sealing request on "business realities" grounds, including to prevent the disruption of operations, to safeguard employee morale, and to avoid "waiv[ing] privilege, broadcast[ing] their strategy, and/or fil[ing] a document that contains confidential commercial information." BDoc. 3678 at 4.

23. On November 22, 2019, the Bankruptcy Court entered an order (the "Sealing Order") granting the Motion to Seal Plan B. BDoc 3679. Unlike the Motion to Seal Correspondence, SGM did not immediately, or even belatedly, object to the Motion to Seal Plan B. On November 24, 2019, the Debtors filed the Status Report, which marked Plan B as filed under seal pursuant to the Sealing Order. BDoc. 3692.

24. On November 25, 2019, SGM filed a document styled as a "reservation of rights ("SGM Reservation of Rights"). *See* App. at 1332. In the SGM Reservation of Rights, SGM vigorously protested consideration of the Correspondence outside the context of an adversary proceeding initiated by the Debtors. *See id*. However, SGM did not challenge or even mention the filing of Plan B under seal. *See id.*

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F. The Status Conference and MAE Order

25. The Court held the Status Conference on November 26, 2019. App. at 1346-1406. During that hearing, there was no discussion by the Debtors or the parties in the courtroom of Plan B or its impact on the topics of discussion during the Status Conference. Indeed, the efforts of Debtors counsel to close the courtroom were unsuccessful and regarded as unnecessary by the Bankruptcy Court. App. at 1394-1395. There was, however, considerable discussion of issues relating material adverse effects, the necessity or lack thereof for an adversary proceeding, and timing considerations regarding closing. App at 1397-1406.

26. Following the Status Conference, on November 27, 2019, the Bankruptcy Court entered an order(the "MAE Order") finding that there were no Material Adverse Effects under the terms of the APA and that the APA required SGM to close the Sale by no later than December 5, 2019. App. at 1373.

27. The Bankruptcy Court issued a memorandum of decision supporting the MAE Order, stating that "[t]he Court has previously found that the conditions precedent to closing set forth in [Section] 8.6 of the APA has been satisfied. All other conditions precedent to closing were satisfied as of November 19, 2019." App. at 1371. Pursuant to the APA, SGM was required to close the Sale within 10 business days of the Debtors' satisfaction of all conditions to closing. *Id.* On December 3, 2019, SGM appealed the MAE Order (the "MAE Order Appeal"), which gives rise to the Motion. App. at 1375. The MAE Order appeal is docketed in this Court under this consolidated Case No. 19-10352-DSF.

III. Argument

SGM asks this Court to provide access to a document, which may "waive privilege, broadcast their strategy, and/or … contain[s] confidential commercial information." BDoc. 3678 at 4. SGM requests this relief despite never objecting to the Motion to Seal Plan B, never seeking reconsideration of the Sealing Order, and

never appealing the Sealing Order. Further, neither the Debtors nor the Bankruptcy Court discussed Plan B during the Status Conference that preceded the MAE Order and the related Memorandum of Decision. Indeed, the Bankruptcy Court record included numerous references to the potential impact of SGM's failure to close the Sale before the Court entered the MAE Order.[4] SGM's attempt to subvert the strictures of appellate practice through its Motion should be denied.

A. SGM Overstates the Scope and Effect of Rule 8009.

SGM inaccurately suggests that Rule 8009 authorizes the Court to grant SGM private access to Plan B notwithstanding the Sealing Order. *See* Mot. at 10. The Bankruptcy Court's power to enter a sealing order is statutory not procedural.

> Section 107(b) of the Bankruptcy Code permits the bankruptcy court to place under seal certain information or matters contained in a paper filed in a title 11 case. Paragraph (f) of Rule 8009, which is new and has no counterpart in the Appellate Rules, deals with the manner in which such secret or confidential information is to be protected in the event the document or documents containing such information are included in the record on appeal.

10 *Collier on Bankruptcy* ¶ 8009.11 (16th ed. 2019) (emphasis added). SGM has no commercial right to access a document not subject to discovery, not publically filed and not otherwise subject to the jurisdiction of this Court. *See Spear v. Ernst & Young (In re Policy Mgmt. Sys. Corp.)*, 67 F.3d 296, 1995 WL 541623, at *4 (4th Cir. Sept. 13, 1995) (unpublished) ("we conclude that a document must play a relevant and useful role in the adjudication process in order for the common law right of public access to attach").

[4] Plan B is, by definition, not probative of the issues raised in the consolidated appeals concerning the AG Conditions Order or Scheduling Order because those orders were entered before the Debtors filed Plan B under seal.

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By contrast, Rule 8009(f) is not a substantive rule of law that authorizes an appellate court to grant a party access to a document filed under seal. Rather, Rule 8009(f)[5] merely permits a party to move to include a sealed document in the record on appeal. Indeed, its clear purpose is to provide a mechanism for the clerk to transmit a document that has been filed under seal to the appellate court, which is not otherwise permitted to have access to the document. *See* Rule 8009(f) ("If the motion is granted, […] the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending."). The notion that Rule 8009 authorizes the Court to provide an appellant access to a sealed document—even if properly in the record on appeal—should be rejected. It is in this light, that the Court should examine SGM's failure to challenge, seek reconsideration or timely appeal the Sealing Order.

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[5] Rule 8009(f) provides:

> A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, ***but the bankruptcy clerk must not transmit it to the clerk of the court where the appeal is pending as part of the record***. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal. If the motion is granted, the must notify the bankruptcy court of the ruling, and the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending.

Rule 8009(f) (emphasis added).

B. The Motion Impermissibly Seeks Reversal of the Sealing Order Notwithstanding SGM's Failure to Object, Seek Reconsideration, or Appeal.

This Court lacks subject matter jurisdiction to consider SGM's request for access to Plan B because the Motion is a collateral attack on the now-final and unappealed Sealing Order. *See, e.g., In re Young*, 237 B.R. 791, 795 (B.A.P. 10th Cir. 1999) ("An absolute prerequisite to appellate jurisdiction is the timely filing of a notice of appeal.") *aff'd on other grounds* 237 F.3d 1168 (10th Cir. 2001). An appellate court cannot grant relief sought on appeal if the request on appeal is effectively a collateral attack on a different final order that was not timely appealed. *In re Young*, 237 B.R. at 795. *See also In re Grantham Bros.*, 922 F.2d 1438, 1442 (9th Cir. 1991), *cert. denied*, 502 U.S. 826 (1991) ("The failure of the debtors to seek any review, reconsideration, or stay of the bankruptcy court's order precluded the collateral attack in Needler's complaint."); *Multnomah County v. Ivory (In re Ivory)*, 70 F.3d 73 (9th Cir. 1995) (*res judicata* precluded collateral attack on confirmation order, despite possible jurisdictional error). SGM's claim that it is not seeking to unseal Plan B is disingenuous. *See* Mot. at 10. SGM requests that this Court modify the Sealing Order to provide access to an entity—SGM—that was not approved by the Bankruptcy Court.

In *In re Motions Seeking Access to 2019 Statements*, the court found that a final order under § 107 cannot be collaterally attacked on appeal given the statutory predicate to grant a sealing order despite a common law presumption of public access. *See In re Motions Seeking Access to 2019 Statements,* 585 B.R. 733, 748 (D. Del. 2018) ("The propriety of the 2019 Orders, in place (in one form or another) for 14 years now, has been established by prior appellate review, and is not subject to collateral attack, as this Court has previously determined.").

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Had SGM timely appealed the Sealing Order, SGM would still need to demonstrate that the decision to allow the filing under seal and to deny access to SGM was an abuse of discretion. *Id.* at 745. SGM is demonstrably inaccurate in its claim that the basis for filing Plan B under seal is "no longer extant." *See* Mot. at 10. The Debtors are in the process of completing the Bankruptcy Court-approved closure of St. Vincent Medical Center and pursing alternative transactions concerning their remaining assets. Disclosure of Plan B while the Debtors are in the midst of its implementation would undercut the very purpose of the Sealing Order. The Court should reject SGM's unsupported offer to rethink the Bankruptcy Court's decision to seal Plan B.

C. Plan B Is Not Properly Part of the Record in This Appeal Under Rule 8009 Because Statements Concerning the Impact of SGM's Failure to Close Were in the Record Before Plan B Was Filed.

Plan B is not properly considered part of the record on appeal even if SGM is not given access to the document. A document filed under seal should only be made part of the record on appeal if the bankruptcy court utilized or relied upon the document in rendering the decision on appeal. *See Townsend v. Columbia Operations*, 667 F.2d 844, 849 (9th Cir 1982) (finding unfiled documents properly considered part of the record on appeal where they "were submitted at the request of the district judge, were physically in the courtroom at the argument, were referred to and relied on by both sides in that argument, and were the basis of the opinion dictated by the court at the end of the argument"); *see also Spear*, 67 F.3d 296, 1995 WL 541623 at *4 ("we conclude that a document must play a relevant and useful role in the adjudication process in order for the common law right of public access to attach"). SGM claims that the Court's statement "it will be unpalatable for the Court and for others here to see patients, young, old, infirmed, being wheeled or carted out of the hospitals" suggests judicial consideration of Plan B. *See* Mot. at 9 (contending

that, "as matters now stand, SGM does not know what the Debtors told the Bankruptcy Court in Plan B about the consequences of SGM's potential failure to close the sale or other disputes between the parties"). SGM's assertion is inconsistent with two material facts, which demonstrate that the Bankruptcy Court record was already replete with references to the possibility of hospital closures if the Sale did not close.

First, the Debtors' Disclosure Statement, whose delayed approval was the very reason for the Status Conference, discloses the risk and potential impact of the Sale failing to close, including the possibility of hospital closures:

> If the SGM Sale does not close, it would have other ramifications in these Cases. [. . . .] Additionally, while the Debtors cannot predict every scenario, it is likely the Debtors may need to close SVMC and Seton due to their ongoing operating losses, which may result in them being sold as real estate for redevelopment rather than a health care facility [. . . .] There can be no assurance that the Debtors can obtain extended access to cash collateral to provide the additional liquidity or that an alternative source of financing would be available to fund operations at SFMC until an alternative deal could be negotiated and closed.

BDoc. 2994 at 86.

Second, there were a multitude of pleadings filed in the Bankruptcy Court, including pleadings in which SGM joined, that discussed the possibility that the Debtors would be required to close hospitals if the Sale did not close. *See* App at 879-880 ("absent relief, the Debtors' sale to SGM of its four remaining hospitals [. . .] will collapse, which would result in loss of access to critical healthcare in underserved communities, the loss of thousands of jobs, and the loss of anticipated recoveries to creditors"); *see also* BDoc. 2946, Ex. A. at 1-2 ("if the Debtors are unsuccessful in their efforts to cut off the conditions under Section 363 of the Bankruptcy Code and the sale to SGM does not proceed, the likely outcome is the

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closure of St. Vincent, Seton, and perhaps St. Francis"). Indeed, the Bankruptcy Court made similar findings on the record at the hearing on the AG Conditions Motion, at which SGM's counsel was present. *See* App. at 1416 (finding that, absent the Sale, "there is no money to fund the continued operations of the Debtor, which would inure to the detriment of thousands of patients, thousands of employees, and not to mention the creditors in the case"). SGM's conclusion that the Court's comments regarding a potential hospital closure ***must*** stem from Plan B ignores these public pleadings and declarations. Accordingly, Plan B is not properly part of the record in this appeal and the Court should not grant SGM access to Plan B.

D. SGM's Own Delay In Requesting Reversal or Reconsideration of the Sealing Order Is Insufficient Cause to Alter Briefing Deadlines.

The Motion does not warrant delay in briefing deadlines. As shown above, the Sealing Order was entered November 22, 2019, and SGM was excluded from the list of permitted recipients.[6] Significantly, SGM and did not file a motion for reconsideration under Rule 9024, or seek other relief under Rule 8002, within 14 days of the entry of the Sealing Order. SGM's self-created delay does not rise to the level of cause to modify the briefing deadlines in this appeal.

E. SGM's Motion to Consolidate the Appeals and the Committee's Intervention Are Not Grounds to Extend or Require Joint Briefing.

SGM is the appellant with full mastery of the issues that it believes will control the success, however unlikely, of its appeals. Those issues are known to it today. The presence of multiple (two) appellees, who may, or may not, file a joint brief or adopt by reference the other's brief, will not affect SGM's responsibilities to the Court or materially alter SGM's likelihood of success. Intervention by the

[6] Plan B was shared with only the Debtors' constituents with an interest in the outcome of the Debtors' Cases, including the Committee and the Debtors' secured lenders. SGM, an asset purchaser, is not a constituent in the chapter 11 cases.

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Committee merely assures that the unique interests of unsecured creditors are adequately represented.

IV. Conclusion

For the foregoing reasons, the Debtors respectfully request that the Court deny the Motion in its entirety.

Dated: January 30, 2020

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CERTIFICATE OF COMPLIANCE

1. This Opposition complies with the word limit of FED. R. BANKR. P. 8013(f) because, excluding the parts of the Opposition exempted by FED. R. BANKR. P.8013(a)(2)(C) and FED. R. BANKR. P. 8015(g), this Opposition contains 4,850 words.

2. This Opposition 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 this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: January 30, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 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 by using the CM/ECF system.

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.

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

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