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UNITED STATES DISTRICT 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,	Case No.: 2:20-cv-00613 (Related to District Court Appeals: Case Nos.: 2:19-cv-10352-DSF; 2:19-cv-10354-DSF; and 2:19-cv-10356-DSF) Lead Chapter 11 Bankr. 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

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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.

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.

Adv. Case No.: 2:20-ap-01001-ER

RESPONSE TO "DEBTORS' MOTION FOR LEAVE BASED ON NEW FACTS AND CIRCUMSTANCES UNDER FEDERAL RULE OF CIVIL PROCEDURE 15(d) TO SUPPLEMENT THE DEBTORS' OPPOSITION TO STRATEGIC GLOBAL MANAGEMENT INC.'S MOTION TO WITHDRAW THE REFERENCE OF ADVERSARY PROCEEDING NO. 2:20-ap- 01001-ER FROM THE UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA" [DOCKET NO. 21]

Defendant Strategic Global Management, Inc. ("SGM") hereby submits this response to the Debtors' "Motion For Leave . . . Under Rule 15(d) . . . . " [Doc. No. 21] (the "Motion for Leave") to supplement their opposition [Doc. No. 11] (the "Opposition") to SGM's motion [Doc. No. 1] (the "Motion") to withdraw the reference of the above-captioned adversary proceeding (the "Adversary Proceeding") from the United States Bankruptcy Court for the Central District of California (the 'Bankruptcy Court"), and respectfully represents as follows:

I. INTRODUCTION

The Debtors' Motion for Leave should be denied because Federal Rule of Civil Procedure ("Rule") 15(d), the only rule which the Debtors have cited in support of their Motion for Leave, does not apply to, and does not allow for, the supplementing of briefs in support of, or in opposition to motions. If, however, the Court were to consider the Motion for Leave, neither the *Somerset* case, nor the Bankruptcy Court's order [Mot. For Leave, Ex. B] ("Stay Order") denying SGM's Motion to Stay the Adversary Proceeding (the "Stay Motion"), nor the Defendants' motion to dismiss and motion to strike [Mot. For Leave, Ex. C] (collectively, the "Motions to Dismiss") demonstrates that: (i) any of the non-SGM Defendants have consented to bankruptcy jurisdiction; or (ii) the Adversary Proceeding is "progressing." Rather, the Stay Order and Motions to Dismiss demonstrate that the Bankruptcy Court continues to preside over a case in which its jurisdiction has been divested.

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II. ARGUMENT

A. Rule 15(d) Is Inapplicable, Because It Applies Only to "Pleadings" and Pleadings Do not Include Briefs in Support of, or In Opposition to Motions[1]

Without citing to any relevant case[2], secondary, or other authorities, the Debtors erroneously rely on Rule 15(d), which permits amendments to "pleadings". However, Rule 15(d) is inapplicable to their request for leave to supplement their Opposition because their Opposition is not a "pleading" under Rule 7(a).

Rule 7(a) defines the term "pleadings" to include only "(1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer." Fed. R. Civ. P. 7(a); *see also Contreraz v. Stockbridge* , No. 1:06-CV-01817-LJO, 2012 WL 396503, at *1 (E.D. Cal. Feb. 7, 2012) ("Rule 15(d) does not require the moving party to satisfy a transactional test, but there must still be a **relationship between the claim in the original pleading and the claims sought to be added**. *Keith v. Volpe,* 858 F.2d 467, 474 (9th Cir.1988)" (emphasis added). The fact that Rule 15(d) is only applicable to "Pleadings" defined under Rule 7(a) – and not "Motions and Other Papers" under Rule 7(b) – is further supported by the advisory committee notes to Rules 7 and 15. Fed. R. Civ. P. 7(a) advisory committee's note ("For amendment of

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[1] The "Motion" is also procedurally defective and ambiguous, and should denied for this reason. Although styled as a "Motion" the Debtors do not make any attempt to comply with Local Rule 7-5 regarding the filing and service of a "notice of motion," which would give other parties notice of the hearing on the Motion (and, in turn, the opposition deadline prescribed by Local Rule 7-9). Moreover, the Motion is not an "Ex Parte Application" under Local Rule 7-19; nowhere in the Motion does it reference Local Rule 7-19, or the words "Ex Parte" or "Application."

[2] Both the *Keith v. Volpe* , 858 F.2d 467 (9th Cir. 1988) and *San Luis & Delta-Mendota Water Auth. v. U.S. Dep't of Interior*, 236 F.R.D. 491, 496 (E.D. Cal. 2006) cases dealt with requests to supplement complaints, which are undoubtedly "pleadings" defined under Rule 7(a).

pleadings [as opposed to "Motions and Other Papers described in Rule 7(b)], see Rule 15 dealing with amended and supplemental pleadings."); Fed. R. Civ. P. 15(a) advisory committee's note (2009 Amendment, " . . . Serving a motion attacking the pleading did not terminate the right to amend, because a **motion is not a 'pleading' as defined in Rule 7**") (emphasis added).

Read together, Rules 7(a) and 15(d) dictate the conclusion that the Opposition is not a "pleading" that can be supplemented in the manner that the Debtors are requesting through the Motion. On this basis alone, the Court should deny the Motion.

B. The Bankruptcy Court Is Continuing To Exercise Jurisdiction Improperly.

Setting aside the Motion for Leave's procedural defects, the Motion for Leave demonstrates exactly why it is imperative that this Court withdraw the reference of the pending Adversary Proceeding. As the Debtors acknowledge, the Bankruptcy Court denied SGM's Stay Motion, notwithstanding the fact that the Bankruptcy Court has been divested of jurisdiction because the appeals currently pending before this Court involve the same issues that are raised in the Adversary Proceeding.

The Debtors' attachment of the Defendants' Motions to Dismiss highlights exactly why the Bankruptcy Court has been divested of jurisdiction. The Motion to Dismiss, made pursuant to Civil Rule 12(b)(6), is based, in part, on the Debtors' failure to state a claim for breach of contract because the Debtors failed to satisfy the closing conditions set forth in § 8.7 of the Asset Purchase Agreement between the Debtors and SGM. ("APA"). (Mot. For Leave, Ex. C, 12-16). That identical issue is pending before this Court in the Debtors' appeal from the Bankruptcy Court's November 27, 2019 Order. (Opening Brief, Doc. No. 43, Case No. 2:19-cv-10352-DSF, 29 ("Debtors did not meet the requirements of § 8.7"). Thus, the issue of the Debtors' satisfaction of § 8.7 of the APA is currently being adjudicated in both the Bankruptcy Court and in the District Court, in its capacity as an appellate court.

Without question, the Bankruptcy Court's jurisdiction has been divested, and the Bankruptcy Court's refusal to recognize that fact is subjecting SGM and the non-SGM Defendants to the: (1) unnecessary expenditure of time and resources in defending a lawsuit in a court that does not have jurisdiction; (2) risk of conflicting rulings by the Bankruptcy Court and the District Court on the very same issue, and (3) risk that regardless of how the bankruptcy court rules on § 8.7, and even if it rules in the Defendants' favor, that ruling will be nullified on appeal because of the Bankruptcy Court lacked jurisdiction to make such a ruling. *See In re Padilla*, 222 F.3d 1184, 1194 (9th Cir. 2000) (lacking jurisdiction, "[t]he Bankruptcy Court's discharge of Padilla's debts in bankruptcy is void, the BAP's decision is affirmed, and the case is remanded for further proceedings consistent with this opinion.").

The Debtors have quoted from the Bankruptcy Court's statement, in its tentative ruling on the Stay Motion, that its orders of November 18 and November 27, 2019 (now on appeal; finding that the Debtors have satisfied all conditions to closing, and that SGM was "obligated" to close the sale on December 5, 2019) were not meant to have any preclusive effect following termination of the sale. However, those statements do nothing to alleviate, and can do nothing to modify the Bankruptcy Court's divestiture of jurisdiction.

Divestiture is not predicated on, or triggered only by orders on appeal that are "preclusive." If anything, the Bankruptcy Court's statements regarding its prior order, which appear to be an attempt to "un-ring the bell" of its clearly erroneous orders, only creates more confusion as to what will be litigated in connection with the breach of contract lawsuit.

Based upon these undisputed facts and the applicable law relating to the divestiture of jurisdiction cited in SGM's Motion, the case for withdrawal of reference is now even more compelling than when SGM filed its Motion. This Court should withdraw the reference, and immediately stay all proceedings in connection with the Adversary Proceeding until this Court has finally adjudicated the pending

appeals.

C. The Non-SGM Defendants Have Not Consented To Jurisdiction.

To counter the non-SGM Defendants unassailable claim that they did not consent to bankruptcy court jurisdiction, the Debtors have made the absurd-on-its-face argument that the Defendants' Motion to Dismiss constitutes "consent" to jurisdiction. *See* (Motion for Leave, 5:3-14).

In light of the Bankruptcy Court's improper refusal to stay the Adversary Proceeding discussed above, the non-SGM Defendants were required to respond to the complaint, or risk being in default. Accordingly, the non-SGM Defendants continued to challenge the Bankruptcy Court's jurisdiction through a timely filed Motion to Dismiss, for, *inter alia* , lack of subject matter jurisdiction based on divestiture and for Constitutional reasons. Not surprisingly, the Debtors have cited no authority for the proposition that a defendant's moving to dismiss on jurisdictional grounds is a consent to jurisdiction. On the other hand**,** there is abundant case law to the opposite effect. *In re Ravago*, No. ADV 14-00066-BMW, 2017 WL 2665032, at *4 (B.A.P. 9th Cir. June 20, 2017) ("In the bankruptcy court, the Nationstar Defendants expressly objected to the bankruptcy court's entry of a final judgment but simultaneously moved to dismiss the complaint, i.e., for entry of a final judgment in favor of Defendants . . . these conflicting assertions do not necessarily add up to a waiver of the Nationstar Defendants' objection to the bankruptcy court's authority to enter a final judgment . . . . . "); *In re Parklane/Atlanta Joint Venture*, 927 F.2d 532, 537 n.7 (11th Cir. 1991) (" . . . also argues that because the plaintiff has filed an answer to the involuntary petition it has therefore waived any objection to the bankruptcy court's jurisdiction. We do not agree.").

The Debtors' argument that "the progression" of the Adversary Proceeding in the Bankruptcy Court, coupled with the Defendants' "active participation therein" is further evidence that the Adversary Proceeding is a "core" proceeding, is a classic *non-sequitur*, as well as being irrelevant. First, as SGM demonstrated in its reply

brief, the core/non-core distinction is not determinative of the Constitutional limits on the Bankruptcy Court's jurisdiction described by the United States Supreme Court in *Stern*. Second, the fact that the Bankruptcy Court compelled the Defendants to respond to the complaint, and the filing of their motions to dismiss, neither show that the non-SGM Defendants consented to the Bankruptcy Court's jurisdiction, nor that the Adversary Proceeding is "progressing."[3]

III. CONCLUSION

For all of the foregoing reasons, the Motion for Leave should be denied.

Dated: February 26, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
By: */s/ Gary E. Klausner*
Gary E. Klausner
Jeffrey S. Kwong

[3] The Third Circuit's decision of *Somerset* offers nothing new on the core/non-core issue. In that case the Third Circuit found that the resolution of a dispute regarding a bankruptcy court order approving a debtor's motion to obtain financing was a core matter because that subject is expressly included in 28 U.S.C. § 157(b)(2)(D), and because the party objecting to jurisdiction had expressly consented. *See In r e Somerset Regional Water Resources, LLC*, -- F.3d ----, 2020 WL 628542, *4 (3d Cir. 2020). Here, there is no financing order at issue, nor does the Adversary Proceeding involve the interpretation of the sale order, nor have any of the non-SGM Defendants consented to bankruptcy jurisdiction. Defendants' "active participation" consists exclusively of filing motions to terminate the litigation.

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Verity Health Systems of Californi a, Inc., et al. v. Strategic Global Management, Inc., et al.

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 10250 Constellation Blvd., Suite 1700, Los Angeles 90067.

On February 26, 2020, I served the foregoing document on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ **(BY MAIL)**
I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of such business.

☐ **(BY OVERNIGHT DELIVERY)**
I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 26, 2020, at Los Angeles, California.

/s/ Lisa Masse
LISA MASSE

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