

FILED & ENTERED

NOV 12 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 Medical 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  
Chapter: 11

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.

**ORDER SETTING EMERGENCY HEARING ON  
STRATEGIC GLOBAL MANAGEMENT'S  
OBJECTION TO THE FORM OF THE DEBTOR'S  
PROPOSED ORDER GRANTING THE SALE  
ENFORCEMENT MOTION**

**HEARING DATE:**

Date: November 13, 2019  
Time: 10:00 a.m.  
Location: Ctrm. 1568  
Roybal Federal Building  
255 East Temple Street  
Los Angeles, CA 90012



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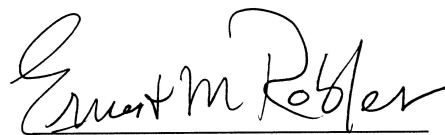
Having reviewed the *Stipulation Resolving “Debtor’s Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding that the Sale is Free and Clear of the Conditions Materially Different than those Approved by the Court; (III) Finding that the Attorney General Abused His Discretion in Imposing Conditions on that Sale; and (IV) Granting Related Relief”* [Doc. No. 3572], the *Notice Regarding Proposed Order Resolving Debtors’ Emergency Motion for the Entry of an Order Enforcing the Sale Order and Requesting Related Relief* [Doc. No. 3573], the *Objection to Order Granting “Debtor’s Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding that the Sale is Free and Clear of the Conditions Materially Different than those Approved by the Court; (III) Finding that the Attorney General Abused His Discretion in Imposing Conditions on that Sale; and (IV) Granting Related Relief”* [Doc. No. 3582] (the “SGM Objection”), the *Debtor’s Response to [the SGM Objection]* [Doc. No. 3586], and the *Official Committee of Unsecured Creditors’ (I) Reply to SGM’s Objection to the Debtors’ Proposed Order on the Debtors’ Enforcement Motion and (II) Statement in Support of the Debtors’ Proposed Order* [Doc. No. 3590], the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) An emergency hearing on the SGM Objection shall take place on **Wednesday, November 13, 2019, at 10:00 a.m.**
- 2) By no later than **Tuesday, November 12, 2019, at 3:00 p.m.**, the Debtors shall provide telephonic notice of the emergency hearing to SGM, the Official Committee of Unsecured Creditors, the Office of the United States Trustee, Service Employees International Union, United Healthcare Workers-West, and the United Nurses Association of California/Union of Health Care Professionals.
- 3) Absent further order of the Court, no further briefing on the SGM Objection will be accepted.
- 4) The parties shall be prepared to respond to the Court’s questions and concerns, attached hereto as **Exhibit A.**

IT IS SO ORDERED.

###

Date: November 12, 2019



Ernest M. Robles  
United States Bankruptcy Judge

## **Exhibit A—Questions and Concerns**

The Court has reviewed the proposed form of order negotiated between the Debtors and the Attorney General (the “AG Order”) and the proposed form of order submitted by Strategic Global Management, Inc. (the “SGM Order”). The parties should be prepared to address the following questions and concerns of the Court.

### **1. Absence of Findings and Conclusions Supporting Entry of the Order**

The stipulation entered into between the Debtors and the California Attorney General [Doc. No. 3572] (the “Stipulation”) provides that the *Memorandum of Decision Granting Debtors’ Emergency Motion to Enforce the Sale Order* [Doc. No. 3446] (the “Memorandum of Decision”) “is hereby vacated and withdrawn.” Stipulation at ¶ 2.

Does the Court have the ability to enter an order that is not supported by findings and conclusions? The Debtors’ motion seeking entry of an order enforcing the terms of the Sale Order (the “Sale Enforcement Motion”) is a “contested matter” within the meaning of Bankruptcy Rule 9014. Rule 9014 provides that Rule 7052 applies to contested matters. Rule 7052 requires the Court to “find the facts specially and state its conclusions of law separately.”

Rule 9014 authorizes the Court to direct that Rule 7052 not apply, which would excuse the Court from issuing findings and conclusions in support of its Order. What are the circumstances in which other courts have issued orders that are not supported by any findings and conclusions?

Will the absence of findings and conclusions lead to future litigation regarding the meaning and interpretation of the Order?

### **2. Meaning of Prefatory Phrase “Solely and Exclusively for the purposes of the APA”**

Paragraph 3 of the AG Order states:

*Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f), and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).*

The Court understands the italicized phrase to mean that the AG Order shall have no precedential effect. SGM contends that this prefatory phrase is ambiguous. SGM should be prepared to further explain its position. It is not clear to the Court exactly what is ambiguous about this prefatory phrase.

### **3. Difference Between the Phrases “Can Be Sold” and “Are Being Transferred”**

SGM objects to the AG Order’s use of the phrase “can be sold,” and asserts that the Order should provide instead that the Assets “are being transferred.” SGM should be prepared to explain what additional meaning is conveyed by the phrase “are being transferred” that is not conveyed by the phrase “can be sold.” Within the context of ¶ 3 of the AG Order, the Court is unable to discern a meaningful difference between the two phrases.

Is it of concern to SGM that the phrase “can be sold” is precatory rather than declaratory? If that is the issue, would the Attorney General accept the phrase “are being sold” in lieu of “can be sold”?

#### **4. The State Court’s Jurisdiction to Enforce the Purchaser Approved Conditions**

Paragraph 4 of the AG Order provides:

This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order. Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

SGM objects to the language authorizing the Attorney General to enforce the Purchaser Approved Conditions in the state courts. SGM fears that the Attorney General will use misdirection to attempt to improperly enforce the Additional Conditions before the state courts. Specifically, SGM postulates that the Attorney General could mislead a state court into believing that the impermissible enforcement of an Additional Condition was instead the permissible enforcement of a Purchaser Approved Condition.

In the Court’s view, the situation envisioned by SGM is not likely to occur. Schedule 8.6 to the APA contains 28 pages setting forth the Purchaser Approved Conditions. The exhaustive detail in the APA would make it very difficult for the Attorney General to overstep the bounds of his authority to enforce the Purchaser Approved Conditions.

The Court is also concerned that it may not have authority to retain jurisdiction with respect to the Attorney General’s enforcement of the Purchaser Approved Conditions. The facts here are similar to those of *Battle Ground Plaza v. Ray (In re Ray)*, 624 F.3d 1124 (9th Cir. 2010), in which the Bankruptcy Court approved the sale of real property, free and clear of a right of first refusal granted to Battle Ground Plaza (the “Sale Order”). After the bankruptcy case had been closed, Battle Ground Plaza launched a collateral attack on the Sale Order that was based on state law breach of contract claims. The Ninth Circuit found that the bankruptcy court lacked jurisdiction over Battle Ground Plaza’s collateral attack on the Sale Order, notwithstanding a provision in the confirmation order stating that the bankruptcy court “shall retain jurisdiction of this case to determine any controversies in connection with assets of the bankruptcy estate.” *Id.* at 1136 n.8.

#### **5. What Specific Objections Does the Attorney General Have to the Alternative Language Proposed by SGM in ¶ 2 of the SGM Order?**

The Attorney General has rejected the following alternative language proposed by SGM:

The Debtors’ transfer to SGM of the Debtors’ assets (the “SGM Sale”) pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the “SGM APA”) is free and clear of, and shall not be subject to or conditioned upon SGM’s performance of, compliance with, or adherence to, any and all Additional Conditions (as defined in the SGM APA and in the Motion), pursuant to Bankruptcy Code §§ 363(b), (f)(1), (f)(4), and (f)(5) and otherwise as provided in the Sale Order.

SGM Order at ¶ 2.

The Stipulation provides that the Attorney General will not waive his right to appeal the Memorandum Decision unless the AG Order is entered without modification. The Attorney General should be prepared to discuss the reasons for his objections to the alternative language proposed by SGM.

**6. Does the AG Order Satisfy § 8.6 of the SGM APA?**

Does SGM take the position that the AG Order does not qualify as a “Supplemental Sale Order” that is final and non-appealable within the meaning of § 8.6 of the SGM APA?