2:19-cv-10354-DSF
2:19-cv-10356-DSF

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.	On Appeal from the United States Bankruptcy Court for the Central District of California Bankruptcy Court Lead Case Number: 2:18−bk−20151−ER
STRATEGIC GLOBAL MANAGEMENT, INC. APPELLANT(S) v. STATE OF CALIFORNIA, VERITY HEALTH SYSTEM OF CALIFORNIA, INC., OFFICIAL COMMITTEE OF UNSECURED CREDITORS, *et al.* APPELLEE(S).	Date: [TBD] Time: [TBD] Judge: Honorable Dale S. Fischer Courtroom: 7D Location: 350 W. First Street Los Angeles, CA 90012

NOTICE OF MOTION AND MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF ORDER, (I) PURSUANT TO BANKRUPTCY RULE 8003(c) RECOGNIZING COMMITTEE AS "PARTY TO THE APPEAL"; OR (II) IN THE ALTERNATIVE, PURSUANT TO 8013(g), GRANTING COMMITTEE RIGHT TO INTERVENE IN ADDITIONAL SGM APPEALS

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PLEASE TAKE NOTICE that the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee"), appointed in connection with the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors") pending in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court") hereby submit the attached motion (the "Second Intervention Motion" or the "Motion") for entry of an Order (i) pursuant to Rule 8003(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") recognizing the Committee as a "party to the appeal"; or (ii) in the alternative, pursuant to Bankruptcy Rule 8013(g), granting the Committee the right to intervene in the above-captioned appeals from (a) the Section 8.6 Order (as defined below) entered by the Bankruptcy Court on November 18, 2019 (the "Section 8.6 Order Appeal") [2:19-cv-10354-DSF]; and (b) the Closing Order (as defined below) entered by the Bankruptcy Court on November 27, 2019 (the "Closing Order Appeal" [2:19-cv-10356-DSF], and collectively with the Section 8.6 Order Appeal, the "Additional SGM Appeals"), filed by appellant, Strategic Global Management, Inc. ("SGM").

PLEASE TAKE FURTHER NOTICE that the Committee brings the Motion pursuant to pursuant to Bankruptcy Rule 8003(c) and 8013(g), Rule 7-4 of

Chapter I of the Local Rules of the United States District Court for the Central District of California.

PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice of Motion and he arguments of counsel, and any other admissible evidence brought before the Court at or before a hearing on the Motion.

PLEASE TAKE FURTHER NOTICE that the Committee will serve this Notice of Motion and the Motion on the parties set forth in the Proof of Service attached hereto. Pursuant to Federal Rule of Bankruptcy Procedure 8013(a)(3): (1) a response to the Motion must be filed within 7 days after service of the Motion and (2) a reply to a response to the Motion must be filed within 7 days after service of the response.

PLEASE TAKE FURTHER NOTICE that, in the event that the Court sets a hearing on the Motion, SGM shall provide notice of entry of the order setting the hearing as directed by the Court.

DATED: December 27, 2019

MILBANK LLP

/s/ Mark Shinderman
GREGORY A. BRAY
MARK SHINDERMAN
JAMES C. BEHRENS

Counsel for the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al*., Debtors and Debtors In Possession.	On Appeal from the United States Bankruptcy Court for the Central District of California Bankruptcy Court Lead Case Number: 2:18−bk−20151−ER
STRATEGIC GLOBAL MANAGEMENT, INC. APPELLANT(S) v. STATE OF CALIFORNIA, VERITY HEALTH SYSTEM OF CALIFORNIA, INC., OFFICIAL COMMITTEE OF UNSECURED CREDITORS, *et al.* APPELLEE(S).	Date: [TBD] Time: [TBD] Courtroom: 7D Location: 350 W. First Street Los Angeles, CA 90012

MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF ORDER, (I) PURSUANT TO BANKRUPTCY RULE 8003(c) RECOGNIZING COMMITTEE AS "PARTY TO THE APPEAL"; OR (II) IN THE ALTERNATIVE, PURSUANT TO 8013(g), GRANTING COMMITTEE RIGHT TO INTERVENE IN ADDITIONAL SGM APPEALS

The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee"), appointed in connection with the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors") pending in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), hereby files this motion (the "Second Committee Intervention Motion" or the "Motion") for entry of an Order (i) pursuant to Rule 8003(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") recognizing the Committee as a "party to the appeal"; or (ii) in the alternative, pursuant to Bankruptcy Rule 8013(g), granting the Committee the right to intervene in the above-captioned appeals from (a) the Section 8.6 Order (as defined below) entered by the Bankruptcy Court on November 18, 2019 (the "Section 8.6 Order Appeal") [2:19-cv-10354-DSF]; and (b) the Closing Order (as defined below) entered by the Bankruptcy Court on November 27, 2019 (the "Closing Order Appeal" [2:19-cv-10356-DSF], and collectively with the Section 8.6 Order Appeal, the "Additional SGM Appeals"), filed by appellant, Strategic Global Management, Inc. ("SGM").[1] In support of the Second Committee Intervention Motion, the Committee respectfully states the following:

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the *Debtors' Emergency Motion to Dismiss Appeal* (the "Dismissal Motion") [District Court Docket No. 2 [2:19-cv-10352-DSF]] or *Strategic Growth Management's Motion to Consolidate Appeals* [District Court Docket No. 20 [2:19-cv-10352-DSF]].

BACKGROUND

By Order dated December 20, 2019, this Court granted the Committee's prior motion to be named as an appellee in SGM's November 29, 2019 appeal from the Enforcement Order (the "Initial SGM Appeal," and, together with the Additional SGM Appeals, the "Appeals"), the first of the three appeals filed by SGM.[2] The Committee files this Second Committee Intervention Motion to seek the same relief with respect to the Additional SGM Appeals, which concern two closely-related Orders, the entry of which the Committee actively supported. The Committee believes that the Additional SGM Appeals, to the extent that they seek reversal or modification of (i) *the Order (1) Finding that SGM Is Obligated to Promptly Close the SGM Sale Under Sec. 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors' Motion for a Continuance of the Hearing to Approve the Disclosure Statement* [Dkt. 3633](the "Section 8.6 Order"); and (ii) *the Order (1) Finding that SGM Is Obligated to Close the SGM Sale by No Later Than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion for Approval of Disclosure Statement* [Dkt.

[2] More specifically, the Court's December 20, 2019 *Order DENYING Emergency Motion to Dismiss Appeal (Dkt. No. 2); Order GRANTING Motion to be Named as Appellee* (Dkt. No. 11) [Dist. Ct. Docket No. 19] (the "Committee Intervention Order") stated that "[b]ecause it is a party in interest that actively took part in the proceedings below, the Creditors' Committee's motion to be named as an appellee is GRANTED." (*Id.* at 8. n.2.)

3724] (the "Closing Order"),[3] are—like the Initial SGM Appeal—without merit and are being prosecuted by SGM primarily to forestall the closing on the sale to SGM (the "Sale") of four of the Debtors' hospitals (the "Hospitals") and ultimately escape the obligations SGM undertook in the asset purchase agreement with the Debtors (the "SGM APA").

Because the Committee's interests are directly and significantly threatened by the baseless arguments advanced in the Additional SGM Appeals, the Committee is filing this Motion so that it might be permitted to be heard with respect to these matters, which are critical to the interests of the stakeholders it represents. While the Court, by Orders dated December 20, 2019, denied the Debtors' Motions to Dismiss all three of SGM's appeals, briefing on the merits lies ahead, and the Committee fully expects to participate in that briefing as an appellee aligned in interest with the Debtors. As was the case with respect to the Initial SGM Appeal, SGM should have included the Committee as a party with respect to the Additional SGM Appeals.

[3] A copy of the Section 8.6 Order and the Closing Order are included in the *Appendix in Support of the Debtors' Emergency Motion to Dismiss Appeal* [District Court Docket No. 3 [2:19-cv-10352-DSF]] ("Debtor Appendix" or "Debtor App.") at Tab 22 and 25, respectively.

RELIEF REQUESTED

The Committee respectfully requests the entry of an Order (i) pursuant to Bankruptcy Rule 8003(c) recognizing the Committee as a "party to the appeal;" or (ii) in the alternative, pursuant to Bankruptcy Rule 8013(g), granting the Committee the right to intervene in the Additional SMG Appeals.

BASIS FOR RELIEF REQUESTED

I. The Committee Is a Party in Interest with Respect to the Section 8.6 and Closing Orders and Should Have Been Named as a Party to the Additional SGM Appeals

As a matter of both fact and law, the Committee was a party in interest with respect to all proceedings relating to the Section 8.6 Order and the Closing Order, and the Committee should have been named as an appellee in each of the Additional SGM Appeals.

A. Party in Interest as Matter of Fact

Both the Initial and Additional SGM Appeals arise out of a contested matter in the Chapter 11 Cases in which the Committee took positions by filing pleadings, and participating actively at hearings and status conferences, that resulted in the entry of the Orders now subject to appeal. The contested matter underlying the Appeals commenced with the filing of the *Debtors' 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 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 [Docket No. 3188] (the "Enforcement Motion") [Debtor App. Tab 7].

(i) Enforcement Order

In support of the Enforcement Motion, the Committee filed two pleadings: (i) the *Official Committee of Unsecured Creditors' Response in Support of Debtors' 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 Conditions Materially Different Than Those Approved by the Court; and Other Relief* [Docket No. 3320] [Debtor App. Tab 13]; and (ii) the *Official Committee of Unsecured Creditors' (I) Reply to SGM's Objection to the Debtors' Proposed Order on the Debtors' Enforcement Motion [Dkt. 3582] and (II) Statement in Support of the Debtors' Proposed Order [Docket No. 3574]* [Docket No. 3590] [Debtor App. Tab 16]. The Committee also appeared and participated in argument at, among others, the November 13, 2019 hearing that resulted in the entry of the Enforcement Order [Docket No. 3620] [Debtor App. Tab 17].

(ii) Section 8.6 Order

On November 18, 2019—concerned by SGM's apparent unwillingness to proceed with the Sale notwithstanding the entry of the Enforcement Order—the

Bankruptcy Court, *sua sponte*, entered the Section 8.6 Order, which concluded that (i) SGM lacked standing to appeal the November 14 Order because it had supported the Enforcement Motion; (ii) "Debtors [had] complied with their obligation under the APA to obtain a final, nonappealable Supplemental Sale Order [the November 14 Order]; and (iii) as a consequence, "SGM [was] now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied." (Section 8.6 Order ¶ 1[Debtor App. Tab 22].)). In conjunction with the Section 8.6 Order, the Bankruptcy Court issued a memorandum of decision (the "Section 8.6 Memorandum Decision"), wherein the Court found that "SGM is judicially estopped from contending that it is entitled to the Evaluation Period and is not obligated to promptly close the sale." *Id.* at 1156.

The Section 8.6 Order was entered *sua sponte* by the Bankruptcy Court, so there was no opportunity for formal pleadings or a hearing with respect to entry of the Order. However, as was the case with the Enforcement Order, the Committee was fully involved in the correspondence and discussions between and among the Debtors, SGM, and the Bankruptcy Court that resulted in the entry of the Section 8.6 Order.

On November 29, 2019, SGM filed an appeal from the Section 8.6 Order, and that—the Section 8.6 Appeal—is currently pending before the Court and

overlaps with the Initial SGM Appeal because they both involve the Bankruptcy Court's rulings regarding Section 8.6 of the SGM APA, the Enforcement Order, and the rights of the parties thereunder.

(iii) Closing Order

On November 26, 2019, the Bankruptcy Court held a status conference (the "Status Conference") regarding the SGM APA and the Sale. SGM appeared and made arguments at the Status Conference as to, among other topics, why it was not obligated to close the Sale. (Debtor App. Tab 27 (Nov. 26, 2019 Transcript). at 1400-1402.) The Committee participated at the Status Conference and was otherwise engaged with the Debtors and SGM with respect to the correspondence and discussions that preceded and took place after the Status Conference. (*Id*. at 1402-1406.)

On November 27, 2019, the Bankruptcy Court entered the Closing Order, which found that SGM was obligated to close the Sale by no later than December 5, 2019. (Debtor App. Tab 25.) The Bankruptcy Court issued a memorandum of decision supporting the Closing Order (the "Closing Memorandum Decision"), in which the Court found that "[t]he Court has previously found that the condition precedent to closing set forth in [Section] 8.6

of the APA has been satisfied [and] [a]ll other conditions precedent to closing were satisfied as of November 19, 2019." ([Debtor App. Tab 24] at 1371.)

On December 3, 2019, SGM filed a third appeal, this time with respect to the Closing Order, and that appeal—the Closing Order Appeal—is currently pending before the Court and, like the Section 8.6 Order Appeal, overlaps with both the Initial SGM Appeal and the Section 8.6 Order Appeal, because all three involve the Bankruptcy Court's rulings regarding Section 8.6 of the SGM APA, the Enforcement Order, and the rights of the parties thereunder

In light of all the foregoing, the Committee was, as a matter of fact, plainly a party in interest with respect to the contested matter underlying the Section 8.6 and Closing Orders and should have been named as an appellee with respect to each of the Additional SGM Appeals.

B. Party in Interest as Matter of Law

As a matter of law, the Committee is also a party in interest with respect to any of the issues raised by the Additional SGM Appeals by virtue of section 1109(b) of chapter 11, title 11 of the United States Code (the "Bankruptcy Code"), which provides as follows:

> A **party in interest, including** the debtor, the trustee, a **creditors' committee**, an equity security holders' committee, a creditor, an equity security holder, or any

> indenture trustee, **may raise and may appear and be heard on any issue in a case under this chapter.**

11 U.S.C. § 1109(b) (emphasis added).

The Committee is thus a party in interest under the definition set forth in section 1109(b) with respect to *any* issue in a chapter 11 case. The Additional SGM Appeals relate to issues raised in the Chapter 11 Cases as contested matters—the Section 8.6 Motion and Order and the Closing Motion and Order—and thus the Committee is a party in interest with respect to all related issues and should have been named as an appellee with respect to each of the Additional SGM Appeals.

Under comparable circumstances, where parties in interest have been inadvertently or improperly omitted as appellees as to appeals arising out of contested matters in which they participated, courts have not hesitated to recognize the excluded parties as appellees (and, to the extent necessary, authorize the correction or reformation of related appellate court dockets) with all the notice and participation rights such parties would have had if included as appellees upon filing of the appeal. *See West v. United States*, 853 F.3d 520, 523 (9th Cir. 2017) ("Consistent with other circuits and the plain language of the rule, we hold that failing to name an appellee in an NOA is not a bar to an appeal" and addressing omitted party's claims as if party had been included as appellee); *Hale* v. *Arizona*, 967 F.2d 1356, 1361 (9th Cir. 1992) ("Rule 3(c) does not require that *appellees* be

listed, only *appellants,*" but treating omitted parties in interest as appellees); *Longmire* v. *Guste*, 921 F.2d 620, 622 (5th Cir. 1991) (per curiam) (holding that appellant's failure to name appellee was not jurisdictional bar to review and deeming omitted parties to be appellees); *Chathas v. Smith*, 848 F.2d, 93, 95 (7th Cir. 1988) (deeming omission of party from notice of appeal to be "harmless error," noting that any "doubt-dispelling function can be performed by a letter to the appellees' counsel," and recognizing omitted parties as appellees); *Williams v. Henagan*, 595 F.3d 610, 615 (5th Cir. 2010) (deeming omitted parties to be appellees on ground that "notices of appeal are liberally construed," especially "where there is no prejudice to the adverse party"); *Lesesne v. Doe*, 712 F.3d 584, 586 n.2 (D.C. Cir. 2013) (recognizing omitted party as appellee because, "[t]o the extent there was error . . . it was harmless as the dispositive order appealed applied to all defendants and [the omitted party] is a public employee represented by the same counsel as the named appellees"); *Longmire v. Guste*, 921 F.2d 620, 623 (5th Cir. 1991) (deeming omitted party to be appellee because "the jurisdictional requirement of *Torres* does not require that appellees' names be specified in a notice of appeal," thereby permitting ready remediation of such omissions). This Court should do the same here and deem the Committee to be an appellee for all relevant purposes with respect

to the Additional SGM Appeals, including the briefing on the merits that is to follow pursuant this Court's scheduling order.

II. Even If the Committee Were Not a Party in Interest, the Committee's Interest in, and Involvement with, the Enforcement Order Would Make Intervention Proper Under Rule 8013(g)

Even if the Committee were not a party in interest, the Committee's interest in, and involvement with, the Section 8.6 and Closing Orders would make intervention in the Additional SGM Appeals proper under Bankruptcy Rule 8013(g). The Committee's interests are profoundly and uniquely implicated by the Additional SGM Appeals, no less than they are by the Initial SGM Appeal. If SGM is not compelled to comply with its obligations under the SGM APA, so that the Sale can be consummated in a timely manner, the likely outcome will be that the Hospitals will be shut down and the Debtors' estates liquidated. Such an outcome would have a profound negative impact on the stakeholders that the Committee represents.

The Committee is a statutorily created body, formed for the purpose of protecting the interest of all unsecured creditors and maximizing proceeds to the unsecured creditors. *See* 11 U.S.C. § 705. Since the Additional SGM Appeals directly concern the funds that will be available to pay unsecured creditors, the Committee's interests are at the heart of these Appeals, and the Committee should be allowed to have a say on all relevant issues. The Committee should thus be

authorized to intervene in the Additional SGM Appeals, as it was with respect to the Initial SGM Appeal. As set forth above, the Committee is a party in interest under the definition set forth in section 1109(b) with respect to *any* issue in a chapter 11 case. The Additional SGM Appeals relate to issues raised in the Chapter 11 Cases as contested matters, and, thus, the Committee is a party in interest with respect to both the Section 8.6 and Closing Orders and the related Additional SGM Appeals.

Indeed, the First, Second, and Third Circuits have all found that section 1109(b) affords to creditors' committees an *unconditional* right to intervene in adversary proceedings, and the same principle applies all the more readily where, as here, a creditors' committee seeks to intervene as to appeals of contested matter orders that arose in the Chapter 11 Cases themselves. *See In re Fin. Oversight & Mgmt. Bd. for Puerto Rico for Puerto Rico*, 872 F.3d 57, 63 (1st Cir. 2017) ("[T]the rights conferred by § 1109(b) are unconditional . . . ."); *In re Caldor Corp.*, 303 F.3d 161, 169 (2d Cir. 2002) ("We hold, therefore, that the phrase 'any issue in a case' plainly grants a right to raise, appear and be heard on any issue regardless whether it arises in a contested matter or an adversary proceeding."); *Matter of Marin Motor Oil, Inc.*, 689 F.2d 445, 451 (3d Cir. 1982) ("It is unlikely that Congress would have used such sweeping language if it had not meant 'case' to be a broadly inclusive term.").

The Committee's broad party-in-interest rights under section 1109(b) of the Bankruptcy Code ensure that it can readily satisfy the appellate intervention standard set forth in Bankruptcy Rule 8013(g), which provides as follows:

> (g) Intervening in an appeal. Unless a statute provides otherwise, an entity that seeks to intervene in an appeal pending in the district court or BAP must move for leave to intervene and serve a copy of the motion on the parties to the appeal. The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed. It must concisely state the movant's interest, the grounds for intervention, whether intervention was sought in the bankruptcy court, why intervention is being sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate.

Fed. R. Bankr. P. 8013(g).

In light of all the foregoing, the requirements of Bankruptcy Rule 8013(g) have all be satisfied:

- The nature of "movant's interest" and the "grounds for intervention" have been amply and irrefutably established.

- The Motion is unquestionably timely. The Section 8.6 Appeal was docketed on November 29, 2019 and the Closing Order Appeal on December 3, 2019, and this Motion has been filed within 30 days after that date, as required by Bankruptcy Rule 8013(g).

- Further, to the extent that Bankruptcy Rule 8013(g) requires a party seeking intervention to state "whether intervention was sought in the bankruptcy court," the intervention standard can also be satisfied. In this case, intervention was not sought in the Bankruptcy Court because, as set forth above, the Committee believed itself to be a party in interest with respect to the underlying Enforcement Motion and had every

reason to expect that it would be named as an appellee with respect to the Appeal.

- Finally, limiting the Committee's role to participation as an *amicus curiae* with respect to the Appeal would be inadequate, under the circumstances, to protect the Committee's rights, which will be directly impacted by the outcome of the Appeal. The Committee will be unable to fulfill its duty to its constituents if it is not authorized to intervene and participate as a full appellee in this Appeal.

The Debtors support the Committee's participation in the Appeal as an appellee, and SGM has nowhere stated that SGM's omission of the Committee from the "parties to the appeal" listed in its *Notices of Appeal* [District Court Docket No. 1] was intentional or warranted by circumstances other than those set forth herein. Thus, the Committee respectfully submits that the Motion should be granted.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) enter an Order (A) pursuant to Bankruptcy Rule 8003(c) recognizing the Committee as a "party to the appeal;" or (B) in the alternative, pursuant to Bankruptcy Rule 8013(g), granting the Committee the right to intervene in the Additional SGM Appeals; and (ii) grant such other and further relief as is just and proper under the circumstances.

DATED: December 27, 2019

MILBANK LLP

/s/ Mark Shinderman
GREGORY A. BRAY
MARK SHINDERMAN
JAMES C. BEHRENS

Counsel for the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2019, 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 I have served the foregoing document by the means set forth below:

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