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Case No. 2:19−cv−10354−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 Possession.	On Appeal from the United States Bankruptcy Court for the Central District of California (Bankr. Lead Case No.: 2:18-bk-20151-ER)
STRATEGIC GLOBAL MANAGEMENT, INC.,	**DECLARATION OF GARY E. KLAUSNER IN SUPPORT OF STRATEGIC GLOBAL MANAGEMENT, INC.'S NOTICE OF MOTION AND MOTION FOR**

[1] SGM has filed a motion to consolidate this appeal (2:19-cv-10352-DSF) 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.

18201512001090000000000017

Appellant,

v.

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

Appellees.

ORDER DIRECTING THE PARTIES TO: (1) COMPLY WITH GENERAL ORDER NO. 11-10, § 5, AND DISTRICT COURT LOCAL RULE 16-15; AND (2) PARTICIPATE IN ADR 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 Directing The Parties To: (1) Comply With General Order No. 11-10, § 5, And District Court Local Rule 16-15; And (2) Participate In ADR Process*" (the "Motion"). Unless otherwise indicated, all capitalized but undefined terms herein shall have the same meanings ascribed to them in the Motion.

Relevant Background Regarding Appeals

4. SGM and the Debtors are parties to three appeals currently pending in this Court; Case Nos. 2:19-cv-10352-DSF; 2:19-cv-10354-DSF; 2:19-cv-10356-DSF (collectively, the "Appeals").

5. The Appeals all relate to disputes and controversies between the Debtors and SGM in connection with: (1) the "Asset Purchase Agreement" dated January 8, 2019 [Bankr. Doc. No. 2305] (the "APA") for the sale of four hospitals (the "Hospitals"), approved by an order of the Bankruptcy Court entered on May 2, 2019 [Bankr. Doc. No. 2306] (the "Sale Order"); and (2) whether the Debtors satisfied all of the conditions for SGM to be obligated to close the sale (the "Sale") of the Hospitals pursuant to the APA on December 5, 2019.

6. The Official Committee of Unsecured Creditors ("Committee") in the Debtors' bankruptcy cases has intervened in Case No. 2:19−cv−10352−DSF, and has requested permission to intervene in the other two appeals. This Motion will be served on SGM and the Committee

7. On December 6, 2019, the Court entered the "*Notice[s] To Parties Of Court-Directed ADR Program*"[3] (the "ADR Notices").

8. On December 20, 2019, the Court entered three orders denying the Debtors motions to dismiss each of the Appeals.[4]

9. The resolution of the Appeals, or any one of them, will have a significant impact on the adjudication of the disputes and controversies between the Parties. The Debtors contend that SGM is in breach of the APA, and has purported to terminate the APA effective December 27, 2019. SGM disputes the Debtors' claims and has consistently reserved all of its rights regarding the APA and its claims against the Debtors. On January 3, 2020, the Debtors filed a Complaint against SGM and other parties and initiated an adversary proceeding in the Bankruptcy Court regarding claims relating to the APA.

The November 14, November 18, and November 27 Orders.

10. The November 14 Order approved a settlement and compromise between the Debtors and the California Attorney General ("AG") – which SGM opposed by, among other things, filing its objection [Bankr. Doc. No. 3582] (the "SGM Objection") to the Debtors' proposed form of order granting the "*Debtors' Emergency Motion [For Order] Enforcing the Order Authorizing the Sale . . . .*" [Bankr. Doc. No. 3188]. The November 14 Order and the subsequent November 18 Order both involved the question of whether the Debtors had satisfied the conditions set forth in Section 8.6 of the APA. Accordingly, any determination by this Court that the November 14 and November 18 Orders, or either of them, were in error will substantially affect the outcome of any litigation between the Parties

[3] 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.

[4] 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.

because, among other reasons, the satisfaction of the conditions set forth in Section 8.6 is a prerequisite to the Debtors' requiring SGM to close the APA.

11. Similarly, the reversal or vacation of the November 27 Order would also have a significant impact on the adjudication of the claims and disputes between the Parties because that order, entered *sua sponte*, purported to obligate SGM to close the APA transaction on December 5, 2019; and SGM's failure to close on that date was a basis for the Debtors' purported termination of the APA on December 27, 2019.

The ADR Process, And Mediation Is In The Best Interest Of All Parties.

12. SGM believes that mediation is in the best interests of the Parties because, absent a settlement or resolution of the claims and disputes between SGM and the Debtors, the Parties will continue to litigate the pending Appeals and, depending upon the outcome of the Appeals, there may be further appellate litigation in the Ninth Circuit. In addition, mediation of the Appeals will likely impact the lawsuit which the Debtors filed against SGM and other defendants on January 3, 2020, which is based on SGM's alleged breach of the APA by failing to close the sale on December 5, 2019.

13. By letter dated January 3, 2020, a copy of which is attached as **Exhibit A** hereto, I requested that the Debtors agree to participate in an ADR process consistent with the Court's ADR Notices, and gave notice to Debtors counsel that this Motion would be filed on or after January 6, 2020. As of the filing of this Motion, SGM has not received any response to my letter of January 3, 2020.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed January 8, 2020, at Los Angeles, California.

/s/ Gary E. Klausner
GARY E. KLAUSNER

EXHIBIT A

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
LAW OFFICES
LNBY&B

January 3, 2020

VIA EMAIL

Samuel R. Maizel
Dentons US LLP
601 S. Figueroa Street
Suite 2500
Los Angeles, CA 90017-5704

Re: In re Verity Health Systems of California, Inc., et al., Debtors
Strategic Global Management, Inc.
District Court Appeals/Mediation

Dear Sam:

I assume that you have received the District Court's Notice to Parties of Court Directed ADR Program ("Notice") which the Court has filed in each of the three currently pending appeals. As I understand the Court's Notice, and after having reviewed Local Rule 16-15, the Court is requiring that the parties participate in an ADR process. The Notice also provides that ADR can either be court directed or privately conducted.

In order to comply with the Notice, our client is proposing to participate with Verity, and the Creditors Committee if it chooses to participate, in a mediation with either a sitting judge or private mediator. We believe, given the anticipated cost and expense of the pending appeals, trial and potential appeals to the Ninth Circuit, and given the delay in the ultimate resolution of the disputes and controversies between our respective clients, that mediation may provide an efficient and cost effective process for resolution. To that end, we have put together a list of prospective mediators, which is on the attached schedule.

We would appreciate your reviewing our list with your client and counsel for the Committee and advising us as to whether your client and the Committee would agree to participate in mediation with any of the persons on the attached list or, if you have other suggestions, we would be happy to consider them.

GARY E. KLAUSNER ATTORNEY AT LAW ▪ EMAIL: GEK@LNBYB.COM ▪ DIRECT: 310.229.3360
10250 CONSTELLATION BLVD., STE 1700, LOS ANGELES, CA 90067 ▪ TEL: 310.229.1234 FAX: 310.229.1244 WWW.LNBYB.COM

In the event that your client is unwilling to participate in mediation we will file a motion with the District Court and request that the District Court order the parties to do so. Would you please provide us with a response no later than close of business on Monday, January 6, 2020.

Very truly yours

Gary E. Klausner

PROPOSED MEDIATORS

Ret. Bankruptcy Judge Gregg Zive;

Ret. Bankruptcy Judge Meredith Jury;

Ret. U.S. District Judge Layn Phillips;

Professor Kenneth N. Klee, UCLA Law School

CERTIFICATE OF SERVICE

1. I hereby certify that on January 8, 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 may not have not consented to electronic service. I have served the foregoing documents by the means set forth below:

Courtesy Copies via Personal Delivery
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Dated: January 8, 2020

/s/ Gary E. Klausner
GARY E. KLAUSNER