

1 LOUISE ANN FERNANDEZ (SBN 86263)
lfernandez@bzbm.com

2 MARCO QUAZZO (SBN 142182)
mquazzo@bzbm.com

3 MARCIA L. RAYMOND (SBN 215655)
mraymond@bzbm.com

4 BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation
5 One Embarcadero Center, Suite 800
San Francisco, California 94111
6 Telephone: (415) 956-1900
Facsimile: (415) 956-1152

7 Attorneys for Defendants
8 Richard Adcock and Steven Sharrer

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION – LOS ANGELES DIVISION

12 In re

13 VERITY HEALTH SYSTEM OF
14 CALIFORNIA, INC., *et al.*

15 Debtors and Debtors in
Possession,

16 California Nurses Association (CNA),
17 Plaintiff,
18 v.
19

20 Verity Health System of California,
Inc., a California corporation; St.
21 Francis Medical Center, an Affiliate; St.
Vincent Medical Center, an Affiliate;
22 Seton Medical Center, an Affiliate; St.
Francis Medical Center of Lynwood, an
23 Affiliate; St. Vincent Dialysis Center,
Inc, an Affiliate; Verity Holdings, LLC,
an Affiliate; DePaul Ventures, LLC, an
24 Affiliate; Richard Adcock, an
Individual; Steven Sharrer, an
25 Individual, and DOES 1 through 500,

26 Defendants.
27
28

District Ct. Case No. 2:20-cv-02623-SVW

Lead BK Case No.: 2:18-bk-20151-ER
Chapter 11 Cases
Hon. Judge Ernest M. Robles

Adversary No.: 2:20-ap-1051-ER

[RELATED TO DOCKET NO. 1]

**OPPOSITION OF RICHARD
ADCOCK AND STEVEN SHARRER
TO CALIFORNIA NURSES
ASSOCIATION'S MOTION TO
WITHDRAW REFERENCE**

Hearing Date and Time:

Date: June 1, 2020
Time: 1:30 p.m.
Place: Court Room 10A
350 W. 1st Street, 10th Floor
Los Angeles, CA 90012
Judge: Hon. Steven V. Wilson

1 **I. INTRODUCTION**

2 The Plaintiff California Nurses Association requests that this Court seize
 3 control over the above-captioned adversary proceeding and divest the United States
 4 Bankruptcy Court of its jurisdiction. Withdrawal of the reference to the Bankruptcy
 5 Court, however, is not mandatory where, as here, resolution of the dispute does not
 6 require substantial and material consideration of federal law. Indeed, the two claims
 7 that Plaintiff asserts against Defendants Richard Adcock and Steven Sharrer are
 8 both state law claims that do not implicate federal law at all. Further, permissive
 9 withdrawal of the reference is not warranted because the Bankruptcy Court is
 10 intimately familiar with the facts underlying Plaintiff's claims and uniquely
 11 positioned to adjudicate efficiently the claims. Defendants Adcock and Sharrer
 12 therefore join their co-defendants in opposing Plaintiff's motion, and ask the Court
 13 to deny it.

14 **II. THE FACTS ALLEGED IN CNA'S COMPLAINT**

15 **A. The Parties**

16 Verity Health Systems of California, Inc. ("Verity") is the former owner and
 17 operator of St. Vincent Medical Center and St. Vincent Dialysis Center
 18 (collectively, "St. Vincent"). Complaint, ¶¶ 8-9. Verity and St. Vincent are among
 19 the Debtors in the bankruptcy case, having filed a voluntary petition for relief under
 20 Chapter 11 of the Bankruptcy Code on August 31, 2018. *Id.*, ¶ 23.

21 Plaintiff California Nurses Association ("CNA") represents nurses formerly
 22 employed by St. Vincent. *Id.*, ¶ 7. Defendants Richard Adcock and Steven Sharrer
 23 (the "Individual Defendants") have served as the Chief Executive Officer of Verity
 24 and the Chief Human Resources Officer of Verity, respectively, throughout the
 25 bankruptcy proceedings. They actively participated in the administration of the
 26 assets of the Debtors' estates, including the decision to close St. Vincent in January
 27 2020. *Id.*, ¶¶ 19-20.

1 **B. Verity's Attempt To Sell St. Vincent To SGM**

2 As part of its efforts to sell St. Vincent in 2019, Verity negotiated an Asset
3 Purchase Agreement (“APA”) with Strategic Global Management, Inc. (“SGM”)
4 that was approved by the Bankruptcy Court on May 2, 2019. Complaint, ¶ 24. The
5 sale of St. Vincent to SGM would have terminated the employment of St. Vincent’s
6 nurses, but under the terms of the APA, substantially all of the nurses would have
7 been offered employment by SGM. *Id.*, ¶ 25. After efforts that spanned nearly a
8 year, and through no fault of Messrs. Adcock and Sharrer, the sale of St. Vincent
9 fell through when SGM failed to perform. *Id.*, ¶¶ 47, 50. Verity, therefore, as
10 responsible stewards of patient safety, made the difficult decision to close
11 St. Vincent in January 2020, which the Bankruptcy Court approved. *Id.*, ¶¶ 54, 55.

12 **C. The Information And Updates Provided To CNA**

13 Throughout the complex and rapidly evolving process of trying to
14 consummate the sale of St. Vincent to SGM, CNA was kept informed of
15 developments by the Bankruptcy Court proceedings and by information provided by
16 Messrs. Adcock and Sharrer. For example, CNA understood from Verity’s court
17 filings that the “failure to consummate the SGM sale would likely result in the
18 closure of St. Vincent...” *Id.*, ¶ 31. CNA further understood that on November 26,
19 2019, the Bankruptcy Court ordered SGM to close the sale by December 5, 2019.
20 *Id.*, ¶ 45. CNA also understood that Debtors filed an emergency motion with the
21 Bankruptcy Court to close St. Vincent on January 6, 2020, which the Court granted
22 on January 8, 2020. *Id.*, ¶¶ 54-55.

23 Defendant Sharrer in his capacity as Verity’s Chief Human Resources Officer
24 sent a series of notices to CNA, pursuant to the federal Worker Adjustment and
25 Retraining Notification Act (“WARN”) and the California WARN Act. In all,
26 Defendant Sharrer sent four WARN notices to CNA between August 12, 2019, and
27 January 13, 2020, as developments in the sale process occurred. *Id.*, ¶¶ 28-33, 41-
28 42, 57. In addition, Defendant Adcock in his capacity as Verity’s CEO sent an

1 email to St. Vincent's nurses on December 18, 2019 providing further information.
 2 *Id.*, ¶ 50.

3 These communications from Mr. Sharrer and Mr. Adcock provided CNA and
 4 St. Vincent's nurses with information concerning the following:

5 – the Debtors' filing for Chapter 11 bankruptcy protection in the United
 6 States Bankruptcy Court on August 31, 2018 (*Id.*, Ex. 1);

7 – the Bankruptcy Court's entry of an order on April 17, 2019 approving
 8 an agreement by Verity to sell St. Vincent to SGM (*Id.*, Ex. 1);

9 – the separation of employment of all St. Vincent employees in
 10 connection with the sale to SGM (*Id.*, Ex. 1);

11 – SGM's agreement to make offers of employment to substantially all
 12 St. Vincent employees (*Id.*, Ex. 1);

13 – Verity's understanding that "the employment loss is expected to be
 14 permanent" for those employees, if any, who are not hired by SGM (*Id.*, Ex. 1);

15 – the closing of the sale "was subject to certain regulatory and other
 16 approvals and the satisfaction of certain other conditions agreed to between" Verity
 17 and SGM (*Id.*, Ex. 1);

18 – "the possibility that the Sale will be unsuccessful ... [in which event]
 19 **St. Vincent may close and none of its employees may be hired** by [SGM]" (*Id.*,
 20 Ex. 1) (emphasis added);

21 – that "[n]ot all of the milestones have been met" as of October 23,
 22 2019 that were necessary to complete the sale to SGM, and consequently "the
 23 separations of employment must be postponed" (*Id.*, Ex. 2);

24 – Verity was continuing "to work expeditiously for a prompt close of
 25 the Sale with SGM" as of November 25, 2019, but that "the separations of
 26 employment will be further postponed" (*Id.*, Ex. 3);

27 – as of December 18, 2020 SGM had "failed to close the sale
 28 transaction, as ordered by the Bankruptcy Court," and "[a]s a result, your

1 employment will NOT end on December 19, 2019, as we had anticipated.” (*Id.*,
2 Ex. 4.)

3 – that the Bankruptcy Court “had approved the sale and entered an
4 order providing that SGM was obligated to close the sale,” but SGM nevertheless
5 “did not close the sale...and there being no feasible alternative for continued
6 operations, the Debtors made the difficult decision to close St. Vincent” (*Id.*, Ex. 5);

7 – that the Bankruptcy Court had granted Debtors’ emergency motion
8 for authority to close St. Vincent on January 9, 2020 (*Id.*, Ex. 5); and

9 – Verity’s belief that “the closure and separations of employment [of all
10 of St. Vincent’s employees] will occur between **January 14, 2020 and January 27,**
11 **2020**” based on information available as of January 10, 2020 (*Id.*, Ex. 5).

12 **III. ARGUMENT**

13 CNA’s Complaint includes four Counts. Counts I and II, for Violation of the
14 Federal WARN Act and the California WARN Act, respectively, are asserted
15 against the Institutional Defendants only and not against Messrs. Adcock and
16 Sharrer. Counts I and II refer to conduct by the “Institutional Defendants” only.
17 Complaint, ¶¶ 88, 90, 92, 96, 97, 99. Count III for Intentional Misrepresentation by
18 Concealment, and Count IV for Negligent Misrepresentation, are asserted against
19 both the Institutional Defendants and Messrs. Adcock and Sharrer. *Id.*, ¶¶ 100-117.
20 CNA’s claims for intentional misrepresentation and negligent misrepresentation
21 against Defendant Adcock are based on a single email that Mr. Adcock sent on
22 December 18, 2019. *Id.*, Ex. 4. The claims for intentional misrepresentation and
23 negligent misrepresentation against Defendant Sharrer are based on four WARN
24 letters sent under his signature. *Id.*, Exs. 1, 2, 3 and 5. Notably, the Complaint fails
25 to identify even one false statement in any of the communications from the
26 Individual Defendants.

1 **A. Withdrawal of the Reference Is Not Mandatory**

2 Plaintiff argues that withdrawal of the reference is mandatory under 28 U.S.C.
3 §157(d), because resolution of its claims requires consideration of federal law.
4 Motion, pp. 15-20. This is not true as to the two counts asserted in the Complaint
5 against the Individual Defendants. Count III for Intentional Misrepresentation by
6 Concealment and Count IV for Negligent Misrepresentation are tort claims
7 governed exclusively by California state law. See *GemCap Lending, LLC v.*
8 *Quarles & Brady, LLP*, 269 F. Supp. 3d 1007, 1039-1040 (C.D. Cal. 2017), aff'd
9 sub nom. *GemCap Lending I, LLC v. Quarles & Brady, LLP*, 787 F. App'x 369
10 (9th Cir. 2019). No consideration of federal law is required to adjudicate the claims
11 against the Individual Defendants. CNA's motion does not contend otherwise.
12 Accordingly, withdrawal of the reference is not mandatory as to the claims asserted
13 against Defendants Adcock and Sharrer (nor as to the additional claims against the
14 Institutional Defendants).

15 Nor is withdrawal of the reference mandatory as to the claims asserted
16 against the Institutional Defendants. In the interests of judicial efficiency and to
17 avoid duplication, Messrs. Adcock and Sharrer hereby adopt, incorporate by
18 reference, and join in the additional facts and arguments presented in the Opposition
19 to Plaintiff's Motion to Withdraw the Reference filed by the Institutional
20 Defendants, including the Introduction, Statement of Facts, and Argument section
21 III. A. setting forth the reasons mandatory withdrawal is not warranted.¹

22
23
24
25 _____
26 ¹ "It is permissible for a party to adopt the motion of another party when the facts
27 between the parties are essentially the same and the adoption would promote judicial
28 efficiency." *Vazquez v. Central States Joint Bd.* (N.D. IL 2008) 547 F.Supp.2d 833,
867; see also *In re Blanchard* (Bankr. C.D. Cal. 2016) 545 B.R. 18, 21.

B. Good Cause Does Not Exist for Permissive Withdrawal

CNA argues that permissive withdrawal is appropriate because the claims asserted against the Individual Defendants are “non-core” claims. However, the tort claims clearly relate to and arise from the bankruptcy proceedings, and in particular the administration of the estate and sale of its assets. In issuing the WARN notices and the email which form the basis for CNA’s tort claims, Messrs. Adcock and Sharrer were acting as officers of the Debtors and were providing information relating to the bankruptcy proceedings and assets under the Bankruptcy Court’s exclusive jurisdiction. The Individual Defendants’ communications, which are attached to the Complaint as Exhibits 1 to 5, discuss the Debtors’ filing for Chapter 11 bankruptcy protection and the Bankruptcy Court’s subsequent orders, including the orders that approved Debtors’ sale of St. Vincent to SGM, required SGM to close on the sale, and granted Debtors’ emergency motion to close St. Vincent. Indeed, the final communication on which the claims against Messrs. Adcock and Sharrer are based, was necessitated by the Bankruptcy Court’s order to close St. Vincent. The claims asserted against the Individual Defendants are thus inextricably intertwined with the bankruptcy proceedings.

CNA contends these communications from the Individual Defendants somehow are actionable “misrepresentations.” The Bankruptcy Court is clearly in a better position than the District Court to adjudicate claims involving representations that relate directly to the bankruptcy proceedings, including its own orders. The Bankruptcy Court is already intensively familiar with the bankruptcy proceedings and can therefore adjudicate claims involving the proceedings efficiently. Permissive withdrawal of the reference is therefore inappropriate.

The Opposition filed by the Institutional Defendants presents additional reasons why permissive withdrawal of the reference is not warranted. In the interests of judicial efficiency and to avoid duplication, Messrs. Adcock and Sharrer hereby adopt, incorporate by reference, and join in the additional arguments

1 presented in the Institutional Defendants' Opposition, including Argument
 2 section III. B., which addresses why the claims asserted are "core" claims under the
 3 Bankruptcy Code, how Plaintiff waived its right to contest the Bankruptcy Court's
 4 jurisdiction, why judicial economy and uniformity would be served by denying
 5 permissive withdrawal, and why CNA's motion constitutes forum shopping.

6 In addition, even assuming *arguendo* that the Court found this action not to be
 7 a core proceeding based on the fact that it arose in the Bankruptcy cases, and
 8 concluded that CNA had a right to a jury trial, judicial economy would dictate that
 9 the case remain in the Bankruptcy court. This case is similar to the situation in *In*
 10 *re Heller Ehrman, LLP*, 464 B.R. 348 (N.D. Cal. 2011) where the District Court
 11 found:

12 Efficiency mandates the bankruptcy court's retention of this matter....
 13 In addition, the Court finds several additional reasons support its conclusion.
 14 First, leaving the case with the bankruptcy judge at this point is consistent
 15 with Ninth Circuit law. *In re Healthcentral.com*, 504 F.3d 775, 787 (9th Cir.
 16 2007), gives bankruptcy judges authority to resolve pre-trial matters in non-
 17 core proceedings, notwithstanding the lack of consent from all parties. 'As
 18 has been explained before, this system promotes judicial economy and
 19 efficiency by making use of the bankruptcy court's unique knowledge of
 20 Title 11 and familiarity with the actions before them. Accordingly, if we were
 21 to require an action's immediate transfer to the district court simply because
 22 there is a jury trial right we would effectively subvert this system. Only by
 23 allowing the bankruptcy court to retain jurisdiction over the action until trial
 24 is actually ready do we ensure that our bankruptcy system is carried out.' *In*
 25 *re Healthcentral.com*, 504 F.3d at 787–88 (citations omitted). Since a final
 26 judgment is analogous to a jury trial right in that the ultimate decision-making
 27 authority lies outside the bankruptcy court, but there are still efficiencies to be
 28 found within the bankruptcy court, the reasoning of *In re Healthcentral.com*
 applies here as well.

The *Heller* court also noted that the fact that the case was in the early stages
 and might never proceed to trial due to pre-trial motions and other factors coupled
 with the Bankruptcy judge's extensive familiarity with the case mandated that it
 remain in Bankruptcy Court.

1 **IV. CONCLUSION**

2 For all the foregoing reasons, the Court should deny Plaintiff's motion to
3 withdraw the reference.

4
5 DATED: May 4, 2020

BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation

6
7
8 By: /s/ Marco Quazzo

9 Marco Quazzo

10 Attorneys for Defendants

11 Richard Adcock and Steven Sharrer
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28