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☐ FPD ☐ Appointed ☐ CJA ☐ Pro Per ☐ Retained

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

XAVIER BECERRA, CALIFORNIA ATTORNEY  
 GENERAL,  
 APPELLANT,  
 PLAINTIFF(S),  
 v.  
 STRATEGIC GLOBAL MANAGEMENT, INC.,  
 APPELLEE.  
 DEFENDANT(S).

CASE NUMBER:

2:19-cv-10352-DSF

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Xavier Becerra, California Attorney General, hereby appeals to  
*Name of Appellant*  
 the United States Court of Appeals for the Ninth Circuit from:

**Criminal Matter**

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]  
☐ Conviction and Sentence  
☐ Sentence Only (18 U.S.C. 3742)  
☐ Pursuant to F.R.Cr.P. 32(j)(2)  
☐ Interlocutory Appeals  
☐ Sentence imposed:

☐ Bail status:

**Civil Matter**

- ☒ Order (specify):  
 Dist. Ct. orders no. 65 entered June 10,  
 2020, and no. 19 entered Dec. 20, 2019.  
☐ Judgment (specify):  
☐ Other (specify):

Imposed or Filed on \_\_\_\_\_. Entered on the docket in this action on 12/20/19 and 6/10/20.

A copy of said judgment or order is attached hereto.

July 10, 2020

/s/ David K. Eldan,

Date

Signature

☐ Appellant/ProSe ☒ Counsel for Appellant ☐ Deputy Clerk

**Note:** The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).



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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**  
**Form 1. Notice of Appeal from a Judgment or Order of a  
United States District Court**

Name of U.S. District Court:

U.S. District Court case number:

Date case was first filed in U.S. District Court:

Date of judgment or order you are appealing:

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

☒ Yes   ☐ No   ☐ IFP was granted by U.S. District Court

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**List all Appellants** (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

Is this a cross-appeal?   ☐ Yes   ☒ No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case?   ☐ Yes   ☒ No

If Yes, what is the prior appeal case number?

Your mailing address:

City:    State:    Zip Code:

Prisoner Inmate or A Number (if applicable):

Signature

Date

*Complete and file with the attached representation statement in the U.S. District Court*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 6. Representation Statement**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>*

**Appellant(s)** *(List each party filing the appeal, do not use “et al.” or other abbreviations.)*

Name(s) of party/parties:

Xavier Becerra, California Attorney General

Name(s) of counsel (if any):

David K. Eldan (SBN 163592)

Address: 300 S. Spring St. #1702, Los Angeles, CA 90013

Telephone number(s): (213) 269-6041

Email(s): David.Eldan@doj.ca.gov

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

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**Appellee(s)** *(List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)*

Name(s) of party/parties:

Strategic Global Management, Inc.

Name(s) of counsel (if any):

GARY E. KLAUSNER (69077); JEFFREY S. KWONG (288239)

Address: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

Telephone number(s): (310) 229-1234

Email(s): gek@lnbyb.com; jsk@lnbyb.com

*To list additional parties and/or counsel, use next page.*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re VERITY HEALTH SYSTEM  
OF CALIFORNIA, INC., et al.  
Debtors.

CV 19-10352 DSF

Order DENYING Emergency  
Motion to Dismiss Appeal (Dkt.  
No. 2); Order GRANTING Motion  
to be Named as Appellee (Dkt. No.  
11)

Appellant Strategic Global Management, Inc. has appealed an order of the Bankruptcy Court acknowledging that a certain sale of hospital assets is free and clear from certain requirements that the Attorney General of California wished to impose. Debtors have moved to dismiss the appeal due to waiver and lack of standing.<sup>1</sup>

It is questionable whether any exigency exists that could be meaningfully resolved by dismissal of this appeal. Appellant may or may not close the relevant transaction in a timely fashion. If it doesn't, Debtors may or may not run out of operating cash. The existence of a pending appeal at the time the deal falls through may be relevant to

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<sup>1</sup> Because 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. But regardless of its right to intervene, the Court declines to consider any additional arguments raised by the Creditors' Committee in its joinder filed on December 17. December 17 was the deadline for Appellant to respond to the emergency motion to dismiss. The Court will not consider substantive arguments to which the Appellant had no opportunity to respond.



sorting out the legal responsibilities of the various parties somewhere in the future, but dismissal of the appeal would not force Appellant to close or cause cash to appear in the Debtors' accounts. Nonetheless, the Court will decide the motion now given that the matter has been briefed and the Court is ruling in favor of the party that opposes the emergency treatment of the motion.

Appellant did not waive its right to appeal the order entered by the Bankruptcy Court by virtue of its joinder in the original motion for relief. Waiver is the "intentional relinquishment or abandonment of a known right." Hamer v. Neighborhood Hous. Servs. of Chicago, 138 S.Ct. 13, 17 n.1 (2017). Appellant (presumably) agreed with the arguments made in Debtors' original motion and the Bankruptcy Court issued an extensive opinion agreeing with the arguments made in that motion. Appellants do not appeal that. Instead, they appeal the final order later entered by the Bankruptcy Court that was a product of an explicit compromise between Debtors and the Attorney General and that did not necessarily provide the entirety of relief requested in the motion. That compromise and order also resulted in the original opinion being vacated. There is no question that Appellants vigorously opposed the entry of the order and claimed that it did not provide them with the protection sought in the motion and to which they are entitled. While Appellants' arguments may ultimately turn out to be meritless, they did not waive the right to appeal an order that allegedly does not provide the result they had joined in seeking.

A party "aggrieved" by an order of a bankruptcy court generally has standing to appeal that order. "An appellant is aggrieved if directly and adversely affected pecuniarily by an order of the bankruptcy court; in other words, the order must diminish the appellant's property, increase its burdens, or detrimentally affect its rights." In re P.R.T.C., Inc., 177 F.3d 774, 777 (9th Cir. 1999) (internal quotation marks omitted). The premise of the appeal is that the order entered by the Bankruptcy Court does not provide the relief Appellant is entitled to as the prospective purchaser of assets from the Debtors. Appellants claim that the deficiencies in the order could expose them either to liability from an action by the Attorney General or to a reduced value of the

assets if the Attorney General asserts the existence of certain obligations on the holder of the assets in the future. Again, these arguments may ultimately be found to be substantively meritless, but Appellant has a pecuniary interest in that determination.

Debtors' assertion that generally a prevailing party has no standing to challenge the language of the lower court decree is incorrect. First, it is clear if a party that receives only some of what it sought, it is entitled to appeal. Forney v. Apfel, 524 U.S. 266, 271 (1998). In its view, Appellant only received part of what it sought or, alternatively, the ambiguity of the Bankruptcy Court's order rendered its purported victory illusory. Debtors' assertions to the contrary are its position on the substance of the appeal – that the order entered by the Bankruptcy Court was sufficient and everything Appellant wanted. In that sense, Debtors' standing argument begs the entire question posed by the appeal. In addition, language contained in an appealable decree – usually the judgment – has long been held to be subject to reformation on appeal by the prevailing party. See Env'tl. Prot. Info. Ctr., Inc. v. Pac. Lumber Co., 257 F.3d 1071, 1075 (9th Cir. 2001) (citing Elec. Fittings Corp. v. Thomas & Betts Co., 307 U.S. 241, 242 (1939)). The relevant limitation is that “[a] party may not appeal from a judgment or decree in his favor, for the purpose of obtaining a review of findings he deems erroneous which are not necessary to support the decree.” Elec. Fittings Corp., 307 U.S. at 242. This is an appeal of the direct applicable language of the appealable decree, not an appeal for a review of unnecessary findings.

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: December 20, 2019




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Dale S. Fischer  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

In re Verity Health Systems of  
California, Inc.,  
Debtor.

CV 19-10352 DSF  
CV 19-10354 DSF  
CV 19-10356 DSF

Order VACATING Orders of the  
Bankruptcy Court

The Court previously found that these consolidated appeals should be dismissed as moot. The appeals all involved enforcement of a sale of hospitals from the Debtors-Appellees to Appellant. All parties agreed that the sale had been abandoned by the Debtors-Appellees. As a result, the Court found that the appeals were moot because their resolution would not change the material position of the parties.

The Court provided Appellees an opportunity to argue why the appealed-from orders should not be vacated. See Camreta v. Greene, 563 U.S. 692, 713 (2011) (“The equitable remedy of vacatur ensures that those who have been prevented from obtaining review to which they are entitled are not treated as if there had been a review.”) (quotation marks and ellipses omitted). The Court later allowed Appellant to reply to Appellees’ argument.

The Court has reviewed these two filings and finds that the “established practice” of vacatur is appropriate. Appellees’ primary argument involves a previous memorandum decision of the Bankruptcy Court that one of the appealed-from orders (the AG Order) had vacated. Appellees argue that vacatur of the AG Order would inappropriately reinstate the prior vacated memorandum decision. The Court



expresses no opinion on whether vacatur of the AG Order would automatically reinstate the prior vacated memorandum decision, but it is not material because the vacated memorandum decision *also* concerns the sale from the Debtors-Appellees to the Appellant and also appears to be essentially moot. That sale is not going to happen, and Appellees make no effort to demonstrate why the reinstatement of the now-moot vacated memorandum decision concerning that sale would occur or could prejudice the Attorney General of California or any other party.<sup>1</sup>

As for the other appealed-from orders, Appellees argue only that they were interlocutory orders and interlocutory orders are typically not vacated if found to be moot on appeal. Whether or not those orders are interlocutory, the Court sees no reason to leave them in effect as they concern Appellant's purported responsibility to close the now-abandoned sale and can only cause mischief in the ongoing litigation between the parties over that failed transaction.

The orders of the Bankruptcy Court appealed from in appeals CV 19-10352 DSF, CV 19-10354 DSF, and CV 19-10356 DSF are VACATED.

IT IS SO ORDERED.

Date: June 10, 2020



Dale S. Fischer  
United States District Judge

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<sup>1</sup> The Court understands that the *legal issues* decided by the Bankruptcy Court in that memorandum decision could be relevant to future proceedings, but that does not change the fact that the specific controversy that was ruled on – the imposition of conditions on the sale of hospitals to Appellant – is no longer relevant or at issue.