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**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 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

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

Hon. Judge Ernest M. Robles

**DEBTORS' RESPONSE TO LIMITED
OBJECTION OF STRATEGIC GLOBAL
MANAGEMENT, INC. TO FORM OF ORDER
CONFIRMING MODIFIED SECOND AMENDED
JOINT CHAPTER 11 PLAN OF LIQUIDATION
(DATED JULY 2, 2020) OF THE DEBTORS, THE
PREPETITION SECURED CREDITORS, AND
THE COMMITTEE**

[RELATES TO DOCKET NOS. 5504, 5506]

[No Hearing Required]

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Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby file this response (the “Response”) to the *Limited Objection of Strategic Global Management, Inc. to Form of Order Confirming Modified Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and the Prepetition Secured Creditors* [Docket No. 5506] (the “Objection”) filed by Strategic Global Management, Inc. (“SGM”) concerning the *Order Confirming Modified Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and the Prepetition Secured Creditors* [Docket No. 5504] (the “Confirmation Order”).¹ In support of the Response, the Debtors respectfully state as follows:

I.

INTRODUCTION

SGM’s transparent attempt to wreak further havoc on the Debtors, their representatives and their estates should be rejected. The language in the Confirmation Order with respect to the non-Debtor releases, exculpation, and injunctions is entirely consistent with the record and the Court’s Ruling, despite SGM’s mischaracterizations to the contrary. *See* Ruling at 25 (holding that “[t]he Exculpation Clause was a necessary component of the compromise that resulted in the Plan”); *see id.* at 33-34 (approving the Plan Settlement, including the non-Debtor releases, exculpations, and injunctions, because, in part, it “enables confirmation of a Plan that will distribute funds to creditors”); *see id.* at 1 (overruling the SGM Confirmation Objection overruled in its entirety); *see also* Confirmation Br. at 83-84; Confirmation Supp. at Exs. B, C. Further, SGM’s argument that the use of the defined term “Nonrefundable Deposit” in the Confirmation Order would be prejudicial in the SGM Action is nonsensical. Even SGM cannot formulate a valid explanation as to how it would be prejudicial nor has it demonstrated any prejudice that will result from the nomenclature of the Confirmation Order, which substantively protects the parties’ respective rights with respect to the Nonrefundable Deposit. *See* Confirmation Order, at 17(a).

¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Confirmation Order.

At bottom, SGM's Limited Objection is meritless and falls woefully short of establishing a sufficient basis for reconsideration of the Confirmation Order of the Court's Ruling under the applicable standards. Based on the foregoing, and for the reasons more fully set forth below, the Objection should be overruled.

II.

FACTUAL BACKGROUND

1. On July 2, 2020, the Court entered the *Order Granting Joint Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Amended Joint Plan; (IV) Setting Administrative Claims Bar Date; and (V) Granting Related Relief* [Docket No. 4997] (the "Disclosure Statement Order"), which, among other things, scheduled a hearing on confirmation (the "Confirmation Hearing") of the *Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 4993]. *See* Disclosure Stmt. Order at 14.

2. On July 30, 2020, SGM filed the *Objection of Strategic Global Management, Inc. to Confirmation of Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5288] (the "Confirmation Objection"), in which SGM contended, among other things, that the proposed releases, exculpations, and injunctions of the Debtors were impermissible and would interfere with SGM's counterclaims against the Debtors in the pending SGM Action. *See* Confirmation Obj. at 18-20. SGM separately contended that the releases, exculpations, and injunctions of non-Debtors were impermissible. *See id.* at 20-25.

3. On August 5, 2020, the Debtors filed the *Memorandum of Law in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5385] (the "Confirmation Brief"). In the Confirmation Brief, the Debtors responded to SGM's contentions concerning the releases of the Debtors as follows:

To be clear, the Plan Proponents do not trade in the same sleight of hand favored by SGM and its affiliates—the releases, exculpations, and injunctions are not intended to interfere with the pending SGM litigation or SGM’s meritless counterclaims asserted against the Debtors. That litigation will proceed apace without interference from the confirmation process, and the Plan Proponents will make such clarification if requested by the Bankruptcy Court.

Confirmation Br. at 83-84.

4. The Debtors separately responded to SGM’s contentions concerning the non-Debtor releases, exculpations, and injunctions, and demonstrated that the non-Debtor releases, exculpations, and injunctions were proper. *See id.* at 84-89. Unlike the releases of the Debtors, the Debtors did not offer to include language in a confirmation order limiting the scope of non-Debtor releases, injunctions, and exculpations with respect to the SGM Action. *See id.*

5. On August 10, 2020, SGM filed *Strategic Global Management, Inc.’s Response to “Memorandum of Law in Support of Confirmation of the Second Amended Joint Chapter 11 Plan”* [Docket No. 5448] (the “Surreply”). In the Surreply, SGM acknowledged that the Debtors had only agreed (if requested by the Court) to limit the scope of the releases, exculpations, and injunctions of the Debtors—not non-Debtors. *See Surreply* at 8 (“even if the foregoing problem can be solved with clarification in the Confirmation Order, the Plan still impermissibly requires SGM to release any claims it might have against numerous third parties”).

6. On August 11, 2020, the Debtors filed the *Debtors’ (I) Request to Strike or, in the Alternative, Overrule Strategic Global Management, Inc.’s Unauthorized “Surreply” in Support of SGM’s Confirmation Objection and (II) Response to Toyon Associates, Inc.’s Evidentiary Objections to the Declaration of Peter C. Chadwick in Support of the Confirmation Brief* [Docket No. 5456] (the “Motion to Strike”). In the Motion to Strike, the Debtors also recognized that “SGM has substantially narrowed its arguments to the Plan’s release, injunction, and exculpation provisions related to third parties.” *Mot. to Strike* at 5

7. On August 12, 2020, the Debtors filed the *Modified Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5466] (the “Plan”). On August 12, 2020, prior to the Confirmation

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1 Hearing, the Debtors also filed the *Supplement Regarding (I) Resolution of AppleCare*
2 *Confirmation Objection, (II) Redline of Modified Second Amended Joint Chapter 11 Plan of*
3 *Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the*
4 *Committee; (III) Revised Confirmation Order; (IV) Redlined Confirmation Order; and (V)*
5 *Updated Section 15.3 Exhibit to Confirmation Brief* [Docket No. 5468]. The Confirmation
6 Supplement attached, as Exhibit “B,” a revised version of the proposed confirmation order, and
7 attached, as Exhibit “C,” a redline of the proposed confirmation order.

8 8. The proposed confirmation order attached to the Confirmation Supplement
9 contains the identical language concerning the releases of the Debtors with respect to the SGM
10 Action that appears in the Confirmation Order entered by the Court and is consistent with the
11 Confirmation Brief. *See* Confirmation Supp., Ex. B.

12 9. On August 12, 2020, at 10:00 a.m., the Court held the Confirmation Hearing, and,
13 following the Confirmation Hearing, entered its final ruling [Docket No. 5475] (the “Ruling”).
14 The Ruling overruled SGM’s Confirmation Objection in its entirety, including with respect to the
15 releases, exculpations, and injunctions of the Debtors and non-Debtors. *See* Ruling at 24-25
16 (finding exculpation clause appropriate); *id.* at 26-27 (finding that the Confirmation Objection to
17 Section 13.6 of the Plan “is unfounded and is based upon a misreading of the Plan” because “the
18 term ‘Claim’ does not encompass the SGM Admin Claim,” thus, the “Plan’s setoff and
19 recoupment provisions will therefore have no effect upon SGM’s ability to defend itself in the
20 Adversary Proceeding or prosecute the SGM Counterclaim”). Nevertheless, on August 13, 2020,
21 the Debtors lodged the proposed confirmation order, which included the same provisions
22 concerning the scope of the releases of the Debtors with respect to the SGM Action as were
23 included in the Confirmation Supplement. *See* Docket No. 5495.

24 10. On August 14, 2020, the Court entered the Confirmation Order and SGM filed its
25 Objection.
26
27
28

III.

ARGUMENT

Nothing in the SGM Objection warrants any modification of the Confirmation Order for the reasons discussed below. Further, SGM, in effect, asks the Court to reconsider its Ruling without any reference to Rule 60(b) of the Federal Rules of Civil Procedure (the “Civil Rules”) or any evidence to satisfy such standard. Reconsideration of the Ruling and Confirmation Order is prohibited unless a very narrow set of circumstances exist and the relief is sought within the time period permitted by the Civil Rules. *See* FED. R. BANKR. P. (the “Bankruptcy Rules”) 9024; Civil Rule 60. Civil Rule 60(b) expressly provides that:

[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Civil Rule 60(b). SGM has not asserted any basis nor introduced any evidence that would justify relief under any of the narrow factors of Civil Rule 60(b).

First, SGM asserts that the use of “Nonrefundable Deposit” is not consistent with the agreed language and “is also an improper attempt to prejudice SGM’s rights, and influence the outcome of the dispute.” Obj. at 2. However, SGM does not explain how the use of the defined term “Nonrefundable Deposit” in a Confirmation Order would be prejudicial in the SGM Action pending before the District Court, particularly when the Confirmation Order expressly reserves and protects the parties’ respective rights with respect to the Nonrefundable Deposit. *See* Confirmation Order, ¶ 17(a). Nor does SGM contend that the use of the term alters the substantive rights to which the parties agreed. *See, e.g., United States v. Alpine Land & Reservoir Co.*, 984 F.2d 107, 1049 (9th Cir. 1993) (Civil Rule 60(b)(6) may be used only “sparingly as an

1 equitable remedy to prevent manifest injustice.”). Accordingly, the Objection should be
2 overruled.

3 **Second**, in another attempt to reargue the scope of the non-Debtor releases, SGM asserts
4 that the language in the Confirmation Order limiting the scope of the releases of the Debtors with
5 respect to the SGM Action is inadequate and inconsistent with the Debtors’ representations to the
6 Court. However, SGM’s assertions are incorrect and inconsistent with the record. As the
7 Debtors represented, the Debtors included clarifying language in the proposed and entered
8 versions of the Confirmation Order that limit the releases of the Debtors with respect to the SGM
9 Action. *See* Confirmation Supp., Ex. B at § 17(a) (“[T]he Releases of Debtors set forth in Section
10 14(d)(i) of this Confirmation Order and in Section 13.5(a) of the Plan shall not apply to any
11 counterclaim that may be asserted by SGM against the Debtors in the SGM Action, currently
12 pending before the District Court.”); *see also* Confirmation Order at § 17(a) (including identical
13 language). The language is entirely consistent with the Debtors’ representation that the SGM
14 litigation against the Debtors “will proceed apace without interference from the confirmation
15 process, and the Plan Proponents will make such clarification if requested by the Bankruptcy
16 Court.” Confirmation Br. at 83-84; *see also id.* (“[T]he releases, exculpations, and injunctions are
17 not intended to interfere with the pending SGM litigation or SGM’s meritless counterclaims
18 asserted **against the Debtors**.”) (emphasis added). Further, the Debtors never agreed to any other
19 language with respect to limiting the releases as to non-Debtors. *See id.* (The Confirmation Brief
20 clearly stated that the Debtors would only add any other clarifying language “if requested” by the
21 Court.). The Court never requested any clarifying language and overruled the SGM Confirmation
22 Objection. Nevertheless, the Debtors still included the same language limiting the releases of the
23 Debtors in the Confirmation Order. *See id.*; *see also* Confirmation Order at § 17(a).

24 SGM’s argument that it had inadequate time to review the proposed order because it “was
25 lodged after hours on August 13, 2020, with no advance notice to SGM and no redline from any
26 prior proposed order,” disregards the record. *See* Obj. at 1 n.1. The proposed order is consistent
27 with the Confirmation Brief, the proposed order and redline were filed on August 12, 2020, prior
28 to the Confirmation Hearing, and contained the same limitation on releases of the Debtors to

1 which SGM now objects. *Compare* Confirmation Supp., Ex. B at § 17(a) *with* Confirmation
2 Order at § 17(a);² *see also* Confirmation Supp. Ex. C (redline of proposed order). The delay in
3 raising this objection to the proposed order is, alone, sufficient grounds to overrule the objection
4 to the limitation on releases of the Debtors. *See Estillore v. Manfredo, Chapter 7 Trustee, et al.*
5 *(In re Estillore)*, 2017 WL 1371295 at *6 (B.A.P. 9th Cir. 2017) (Relief under Civil Rule 60(b)(6)
6 requires evidence that the *moving party* “was affected by external, extraordinary circumstances
7 and was faultless in delay.”); *In re Negrete*, 183 B.R. 195, 197 (B.A.P. 9th Cir. 1995) (Requests
8 for reconsideration “which advance supporting facts that were otherwise available when the
9 issues were originally briefed, will generally not be granted.”). Accordingly, SGM’s Objection
10 with respect to the limitation of the releases of the Debtors should be overruled as belated and
11 inconsistent with the Ruling.

12 ***Third***, SGM offers a tortured reading of the Court’s Ruling to conflate the issues
13 addressed in the Court’s ruling on setoff and recoupment rights and the releases, exculpations,
14 and injunctions under the Plan. SGM contends that the Court’s finding with respect to the setoff
15 and recoupment provisions of the Plan were, in effect, a wholesale finding by the Court that the
16 release, exculpation, and injunction provisions of the Plan did not apply to SGM. But, SGM
17 flatly ignores the limited scope of the Court’s ruling, which specifically provides that “Plan’s

18 _____
19 ² Specifically, the proposed confirmation order filed with the Plan Supplement provides that:

20 Further, the Releases of Debtors set forth in Section 14(d)(i) of this
21 Confirmation Order and in Section 13.5(a) of the Plan shall not
22 apply to any counterclaim that may be asserted by SGM against the
Debtors in the SGM Action, currently pending before the District
Court.

23 Confirmation Supp., Ex. B at § 17(a). The identical language (other than an updated internal
24 section reference) appears in the Confirmation Order:

25 Further, the Releases of Debtors set forth in Section 15(d)(i) of this
26 Confirmation Order and in Section 13.5(a) of the Plan shall not
27 apply to any counterclaim that may be asserted by SGM against the
Debtors in the SGM Action, currently pending before the District
Court

28 Confirmation Order at § 17(a).

1 setoff and recoupment provisions will therefore have no effect upon SGM's ability to defend
2 itself in the Adversary Proceeding or prosecute the SGM Counterclaim." *See* Ruling at 27. The
3 Court specifically ruled that the exculpation provision of the Plan was permissible, *see* Ruling at
4 24-25, that the non-Debtor releases, exculpations, and injunctions were integral to the Plan and
5 Creditor Settlement Agreements, *see id.* at 33-34, and that the SGM Confirmation Objection was
6 overruled in its entirety. *See id.* at 1 ("[T]he outstanding objections to confirmation of the Plan
7 are OVERRULED[.]"). Further, as the Court ruled, SGM did not advance any persuasive
8 arguments in support of modifying the non-Debtor releases. *See, e.g., id.; see also id.* at 25
9 (approving exculpation clause); *id.* at 33-34 (approving Plan Settlement). SGM's effort to
10 manipulate the Court's Ruling should be overruled.

11 **IV.**

12 **CONCLUSION**

13 WHEREFORE, the Debtors respectfully request that the Court overrule the Objection and
14 grant the Debtors such other and further relief as is just and appropriate under the circumstances.

15 Dated: August 16, 2020

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