| Case | 2:18-bk-20151-ER Doc 6188 Filed 10 Main Document | /20/20 Entered 10/20/20 10:21:58 Dec Docket #6188 Date Filed: 10/30/2020 רמציד טוס | | | |
|---------------------------------|--|--|--|--|--|
| 1 2 3 4 5 6 7 | STEVEN J. KATZMAN (Bar No. 132755) skatzman@bienertkatzman.com TONY R. BISCONTI (Bar No. 269230) tbisconti@bienertkatzman.com BIENERT KATZMAN PC 601 W. 5 th Street, Ste. 720 Los Angeles, California 90071 Tel: 213-528-3400/ Fax: 949-369-3701 Litigation Counsel for the VHS Liquidating Trust UNITED STATES BANKRUPTCY COURT | | | | |
| 8 | | LIFORNIA - LOS ANGELES DIVISION | | | |
| 9 | In re | Lead Case No. 2:18-bk-20151-ER | | | |
| 10 | VERITY HEALTH SYSTEM OF CALIFORNIA, INC., <i>et al.</i> , | Jointly Administered With: CASE NO.: 2:18-bk-20162-ER | | | |
| 11 | Debtors and Debtors In | CASE NO.: 2:18-bk-20163-ER CASE NO.: 2:18-bk-20164-ER | | | |
| 12 | Possession. | CASE NO.: 2:18-bk-20165-ER CASE NO.: 2:18-bk-20167-ER | | | |
| 13 | | CASE NO.: 2:18-bk-20168-ER | | | |
| 14 | □ Affects Verity Health System of | CASE NO.: 2:18-bk-20169-ER CASE NO.: 2:18-bk-20171-ER | | | |
| | California, Inc. | CASE NO.: 2:18-bk-20172-ER | | | |
| 15 | □ Affects Saint Louise Regional Hospital | CASE NO.: 2:18-bk-20173-ER CASE NO.: 2:18-bk-20175-ER | | | |
| 16 | □ Affects St. Francis Medical Center □ Affects St. Vincent Medical Center | CASE NO.: 2:18-bk-20176-ER | | | |
| 17 | □ Affects Seton Medical Center | CASE NO.: 2:18-bk-20178-ER CASE NO.: 2:18-bk-20179-ER | | | |
| 18 | □ Affects O'Connor Hospital Foundation □ Affects Saint Louise Regional Hospital | CASE NO.: 2:18-bk-20180-ER | | | |
| 19 | Foundation | CASE NO.: 2:18-bk-20181-ER | | | |
| 20 | Affects St. Francis Medical Center of Lynwood Foundation | Chapter 11 Cases Hon. Judge Ernest M. Robles | | | |
| | □ Affects St. Vincent Foundation | THIRD STIPULATION APPROVING | | | |
| 21 | □ Affects St. Vincent Dialysis Center, Inc. □ Affects Seton Medical Center Foundation | TOLLING AGREEMENT BY AND BETWEEN THE VHS LIQUIDATING TRUST AND | | | |
| 22 | Affects Verity Business Services Affects Verity Medical Foundation | ASSURED INVESTMENT MANAGEMENT LLC (F/K/A BLUEMOUNTAIN CAPITAL | | | |
| 23 | □ Affects Verity Holdings, LLC | MANÀGEMENT, LLC) AND AFFILIATES | | | |
| 24 | □ Affects De Paul Ventures, LLC □ Affects De Paul Ventures - San Jose | | | | |
| 25 | ASC, LLC | | | | |
| 26 | Debtors and Debtors In Possession. | | | | |
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This stipulation (the "Stipulation") is entered into this 30th day of October, 2020 (the 1 2 "Effective Date"), by and between the VHS Liquidating Trust (the "Trust"), on the one hand, and 3 Assured Investment Management LLC (f/k/a BlueMountain Capital Management, LLC), BlueMountain Guadalupe Peak Fund L.P., BlueMountain Summit Opportunities Fund II (US) L.P., 4 BMSB L.P., BlueMountain Foinaven Master Fund L.P., BlueMountain Logan Opportunities 5 Master Fund L.P., and BlueMountain Montenvers Master Fund SCA SICAV-SIF (collectively, 6 7 "BlueMountain" and, together with the Trust, the "Parties"), on the other hand. The Parties hereby 8 stipulate as follows:

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RECITALS

On August 31, 2018 (the "Petition Date"), the Verity Health System Of California, 10 A. 11 Inc. ("VHS") and the above-referenced affiliated debtors and debtors in possession in the above 12 captioned chapter 11 bankruptcy cases (collectively, the "Debtors") each filed a voluntary petition 13 for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").¹ The Debtors' chapter 11 cases (the "Bankruptcy Cases") are jointly administered under the case 14 captioned In re Verity Health System of California, Inc., Case No. 2:18-bk-20151-ER, which is 15 currently pending before the United States Bankruptcy Court for the Central District of California 16 (the "Bankruptcy Court"). 17

B. As of the Effective Date of this Stipulation, the Trust has advised BlueMountain that
the Trust believes it may have or may desire to assert certain claims, demands, actions and/or causes
of action against BlueMountain on behalf of the Debtors and their respective bankruptcy estates
(the "<u>Estates</u>") pursuant to §§ 544, 545, 547, 548, or 553, including claims arising under applicable
nonbankruptcy law pertaining to the avoidance of a transfer of an interest of the Debtors in property
or any obligation incurred by the Debtors that is voidable under applicable law (collectively, the
"<u>Claims</u>").

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- ¹ All references to "§" herein are to sections of the Bankruptcy Code, 11 U.S.C. §§101, *et seq.* unless otherwise noted.

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| 3 Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and 4 Committee [Docket No. 5466] (the "Plan"), which, inter alia, provides for the transfer of cert 5 causes of action, including the Claims, to a liquidating trust (the "Liquidating Trust") to 6 administered by a trustee (the "Liquidating Trustee") for the benefit of the Estates. 7 D. On September 1, 2020, the Court entered an order [Docket No. 6029] approving 8 Stipulation Approving Tolling Agreement by and Between the Debtors and Blue Mountain Cap 9 Management LLC and Affiliates [Docket No. 6026] by and between the Debtors, on the one ha 10 and BlueMountain, on the other hand, that, among other things, extended the deadline to br 11 certain Claims (defined below) through and including September 30, 2020. 12 E. On October 1, 2020, the Court entered an order [Docket No. 6139] approving 13 Second Stipulation Approving Tolling Agreement by and Between the VHS Liquidating Trust of 14 Assured Investment Management LLC and Affiliates [Dok. No. 6138] by and between the Trust, 15 the one hand, and BlueMountain, on the other hand, that, among other things, extended the deadling 16 to bring certain Claims (defined below) through and including October 30, 2020. 17 F. The Parties deem it to be in their mutual interest | 1 | C. On August 14, 2020, the Bankruptcy Court entered an order [Docket No. 5504] (the | | | | | |
|---|----|---|--|--|--|--|--|
| 4 Committee [Docket No. 5466] (the "Plan"), which, inter alia, provides for the transfer of cert 5 causes of action, including the Claims, to a liquidating trust (the "Liquidating Trust") to 6 administered by a trustee (the "Liquidating Trustee") for the benefit of the Estates. 7 D. On September 1, 2020, the Court entered an order [Docket No. 6029] approving 8 Stipulation Approving Tolling Agreement by and Between the Debtors and Blue Mountain Cap 9 Management LLC and Affiliates [Docket No. 6026] by and between the Debtors, on the one ha 10 and BlueMountain, on the other hand, that, among other things, extended the deadline to br 11 certain Claims (defined below) through and including September 30, 2020. 12 E. On October 1, 2020, the Court entered an order [Docket No. 6139] approving 13 Second Stipulation Approving Tolling Agreement by and Between the VHS Liquidating Trust a 14 Assured Investment Management LLC and Affiliates [Dkt. No. 6138] by and between the Trust, 15 the one hand, and BlueMountain, on the other hand, that, among other things, extended the deadline 16 to bring certain Claims (defined below) through and including October 30, 2020. 17 F. The Parties deem it to be in their mutual interests to enter into the agreement below 18 AGREEMENT 19 <td>2</td> <td colspan="4">"Confirmation Order") confirming the Modified Second Amended Joint Chapter 11 Plan of</td> | 2 | "Confirmation Order") confirming the Modified Second Amended Joint Chapter 11 Plan of | | | | | |
| 5 causes of action, including the Claims, to a liquidating trust (the "Liquidating Trust") to 6 administered by a trustee (the "Liquidating Trustee") for the benefit of the Estates. 7 D. On September 1, 2020, the Court entered an order [Docket No. 6029] approving 8 Stipulation Approving Tolling Agreement by and Between the Debtors and Blue Mountain Cap 9 Management LLC and Affiliates [Docket No. 6026] by and between the Debtors, on the one had 10 and BlueMountain, on the other hand, that, among other things, extended the deadline to br 11 certain Claims (defined below) through and including September 30, 2020. 12 E. On October 1, 2020, the Court entered an order [Docket No. 6139] approving 13 Second Stipulation Approving Tolling Agreement by and Between the VHS Liquidating Trust of 14 Assured Investment Management LLC and Affiliates [Dkt. No. 6138] by and between the Trust, 15 the one hand, and BlueMountain, on the other hand, that, among other things, extended the deadling 16 bring certain Claims (defined below) through and including October 30, 2020. 17 F. The Parties deem it to be in their mutual interests to enter into the agreement below 18 AGREEMENT 19 In consideration, the receipt and sufficiency of which are hereby acknowledged, the Par 10 < | 3 | Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the | | | | | |
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| 7 D. On September 1, 2020, the Court entered an order [Docket No. 6029] approving 8 Stipulation Approving Tolling Agreement by and Between the Debtors and Blue Mountain Cap 9 Management LLC and Affiliates [Docket No. 6026] by and between the Debtors, on the one ha 10 and BlueMountain, on the other hand, that, among other things, extended the deadline to br 11 certain Claims (defined below) through and including September 30, 2020. 12 E. On October 1, 2020, the Court entered an order [Docket No. 6139] approving 13 Second Stipulation Approving Tolling Agreement by and Between the VHS Liquidating Trust of 14 Assured Investment Management LLC and Affiliates [Dkt. No. 6138] by and between the Trust, 15 the one hand, and BlueMountain, on the other hand, that, among other things, extended the deadling 16 to bring certain Claims (defined below) through and including October 30, 2020. 17 F. The Parties deem it to be in their mutual interests to enter into the agreement below 18 AGREEMENT 19 In consideration of the mutual agreements hereinafter set forth, and for other good a 20 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Par 21 hereby covenant and agree as follows: 1. | 5 | causes of action, including the Claims, to a liquidating trust (the "Liquidating Trust") to be | | | | | |
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| 9 Management LLC and Affiliates [Docket No. 6026] by and between the Debtors, on the one ha 10 and BlueMountain, on the other hand, that, among other things, extended the deadline to br 11 certain Claims (defined below) through and including September 30, 2020. 12 E. On October 1, 2020, the Court entered an order [Docket No. 6139] approving 13 Second Stipulation Approving Tolling Agreement by and Between the VHS Liquidating Trust of 14 Assured Investment Management LLC and Affiliates [Dkt. No. 6138] by and between the Trust, 15 the one hand, and BlueMountain, on the other hand, that, among other things, extended the deadle 16 to bring certain Claims (defined below) through and including October 30, 2020. 17 F. The Parties deem it to be in their mutual interests to enter into the agreement below 18 AGREEMENT 19 In consideration of the mutual agreements hereinafter set forth, and for other good a 20 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Par 21 As used in this Stipulation, the following terms shall have the following meanin 23 a. "Tolling Period" shall mean the period from and including the Effective D 24 of this Stipulation until and including the Expiration Date (as that term 25 defined below).< | 7 | D. On September 1, 2020, the Court entered an order [Docket No. 6029] approving the | | | | | |
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| Image: F. The Parties deem it to be in their mutual interests to enter into the agreement below Image: AGREEMENT AGREEMENT In consideration of the mutual agreements hereinafter set forth, and for other good a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Part hereby covenant and agree as follows: Image: Additional addition in the stipulation, the following terms shall have the following meaning a. "Tolling Period" shall mean the period from and including the Effective D of this Stipulation until and including the Expiration Date (as that term defined below). b. "Expiration Date" shall mean November 30, 2020. c. "Timing Defenses" shall mean, but shall not be limited to, any affirmated | 15 | the one hand, and BlueMountain, on the other hand, that, among other things, extended the deadline | | | | | |
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| c. "<u>Timing Defenses</u>" shall mean, but shall not be limited to, any affirmat | 25 | defined below). | | | | | |
| 28 | 26 | b. " <u>Expiration Date</u> " shall mean November 30, 2020. | | | | | |
| | 27 | c. " <u>Timing Defenses</u> " shall mean, but shall not be limited to, any affirmative | | | | | |
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1defenses to the Claims that BlueMountain has, may have, or may claim to2have as of the Effective Date based upon: (i) any statute of limitations; (ii)3laches; (iii) any failure to institute or commence litigation or other legal4proceedings within some specified period, before a specified date, on or5before the happening of a specified event; or (iv) any other defense that is6based, in whole or in part, upon the passage of time.

7 2. The Parties stipulate, covenant and agree that any Claims which, if filed on or before
8 the Effective Date, would have been timely filed, shall be deemed timely filed if filed on or before
9 the Expiration Date. The Parties further stipulate, covenant and agree that any Timing Defenses
10 applicable to the Claims shall be tolled during the Tolling Period.

3. The provisions of this Stipulation comprise all of the terms, conditions, agreements and representations of the Parties respecting subject matter hereof. This Stipulation may not be altered or amended except by written agreement executed by both Parties. The terms of this Stipulation have not been changed, modified, or expanded by any oral agreements or representations entered into or made by the either of the Parties prior to or at the execution of this Stipulation.

4. The Parties further acknowledge that they have, individually or through their
respective counsel, participated in the preparation of this Stipulation, and no provision hereof shall
be construed against any Party by reason of said Party having drafted or prepared the Stipulation.

5. Nothing in this Stipulation shall be construed as an admission by any of the Parties
as to the merits of any of the Claims or any defenses thereto. Further, nothing in this Stipulation
shall prevent the Trust from filing litigation prior to the Expiration Date.

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6. This Stipulation may be executed in one or more original or facsimile or email counterparts, each of which shall be deemed an original, but also which together will constitute one and the same instrument.

7. The Bankruptcy Court shall retain jurisdiction to interpret, implement, and enforce
the provisions of this Stipulation.

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| 1 | Dated: October 30, 2 | 2020 | BIENERT KATZMAN PC |
| 2 | | | |
| 3 | | | By: <u>/s/ Anthony R. Bisconti</u> Steven J. Katzman |
| 4 | | | Tony R. Bisconti |
| 5 | | | Litigation Counsel to the VHS Liquidating Trust |
| 6 | Dated: October 30, 2 | 2020 | ASSURED INVESTMENT MANAGEMENT LLC |
| 7 | | | (F/K/A BLUEMOUNTAIN CAPITAL MANAGEMENT, LLC) ON BEHALF OF ITSELF |
| 8 | | | AND INVESTMENT FUNDS IT MANAGES LISTED BELOW |
| 9 | | | |
| 10 | | | By:Eric M. Albert |
| 11 | | | Counsel to Assured Investment Management LLC (f/k/a |
| 12 | | | BlueMountain Capital Management, LLC), BlueMountain Guadalupe Peak Fund L.P., BlueMountain Summit |
| 13 | | | Opportunities Fund II (US) L.P., BMSB L.P., |
| 14 | | | BlueMountain Foinaven Master Fund L.P., BlueMountain Logan Opportunities Master Fund L.P., BlueMountain |
| 15 | | | Montenvers Master Fund SCA SICAV-SIF |
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