

| | |
|--|--------------------|
| Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Daniel L. Varon, Esq. (SBN 245318) The Zalkin Law Firm, P.C. 10590 W. Ocean Air Dr. Suite 125 San Diego, CA 92130 Tel: 858-259-3011 Fax: 858-259-3015 Email: daniel@zalkin.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Plaintiff Cindy Campbell | FOR COURT USE ONLY |
|--|--------------------|

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

| | |
|---|---|
| In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al Debtor(s). | CASE NO.: 2:18-bk-20151-BB CHAPTER: 11 NOTICE OF MOTION FOR: Motion for Relief From Stay and Plan Injunctions (Specify name of Motion) DATE: 01/30/2024 TIME: 10:00 am COURTROOM: 1539 PLACE: Edward R. Roybal Federal Building 15th Floor 255 E. Temple Street Los Angeles, CA 90012 |
|---|---|

1. TO (*specify name*): Verity Health System of California, Inc.
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 1/5/2024

The Zalkin Law Firm, P.C.
Printed name of law firm

Daniel L. Varon
Signature

Daniel L. Varon
Printed name of attorney

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
The Zalkin Law Firm, P.C.
10590 W. Ocean Air Dr. Suite 125
San Diego, CA 92130

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION FOR** (*specify name of motion*)
Motion for Relief From Stay and Plan Injunctions

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 12/29/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:
Verity Health System of California, Inc

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 12/29/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Law Offices of Michael D. Gonzalez 101 North Brand Blvd Suite 1880 Glendale, CA 91203
Michael Gonzalez-mgonzalez@mdglaw.net
Lorraine Hall- lhallmdglaw.net
eservice@mdglaw.net

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/29/2023 Michelle Wardell
Date *Printed Name*

Michelle Wardell
Signature

| | |
|--|---|
| Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Daniel L. Varon, Esq. (SBN 245318) The Zalkin Law Firm, P.C. 10590 W. Ocean Air Dr. Suite 125 San Diego, CA 92130 Tel: 858-259-3011 Fax: 858-259-3015 Email: daniel@zalkin.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Plaintiff Cindy Campbell | FOR COURT USE ONLY |
| UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION | |
| In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al Debtor(s). | CASE NO.: 2:18-bk-20151-BB CHAPTER: 11 NOTICE OF MOTION FOR: Motion for Relief From Stay and Plan Injunctions (Specify name of Motion) DATE: 01/30/2024 TIME: 10:00 am COURTROOM: 1539 PLACE: Edward R. Roybal Federal Building 15th Floor 255 E. Temple Street Los Angeles, CA 90012 |

1. TO (*specify name*): Verity Health System of California, Inc.
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 1/5/2024

The Zalkin Law Firm, P.C.
Printed name of law firm

Daniel L. Varon
Signature

Daniel L. Varon
Printed name of attorney

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
The Zalkin Law Firm, P.C.

10590 W. Ocean Air Dr. Suite 125
San Diego, CA 92130

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION FOR** (*specify name of motion*)
Motion for Relief From Stay and Plan Injunctions

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 12/29/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:
Verity Health System of California, Inc

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 12/29/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Law Offices of Michael D. Gonzalez 101 North Brand Blvd Suite 1880 Glendale, CA 91203
Michael Gonzalez-mgonzalez@mdglaw.net
Lorraine Hall- lhallmdglaw.net
eservice@mdglaw.net

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/29/2023 Michelle Wardell
Date *Printed Name*

Michelle Wardell
Signature

1 IRWIN ZALKIN, ESQ. (SBN #89957)
DEVIN M. STOREY, ESQ. (SBN #234271)
2 DANIEL VARON, ESQ. (SBN #245318)
The Zalkin Law Firm, P.C.
3 10590 West Ocean Air Drive, Suite 125
San Diego, CA 92130
4 Tel: 858-259-3011
Fax: 858-259-3015
5 Email: irwin@zalkin.com
dms@zalkin.com
6 daniel@zalkin.com

7 *Attorneys for Third-Party Plaintiff Cindy Campbell*

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA — LOS ANGELES DIVISION**

11 In re:

12 VERITY HEALTH SYSTEM OF
13 CALIFORNIA, INC., et al.,

14 Debtors and Debtors in
Possession.

-
- 15 Affects All Debtors
16 Affects Verity Health System of
California, Inc.
17 Affects O'Connor Hospital
 Affects Saint Louise Regional Hospital
18 Affects St. Francis Medical Center
 Affects St. Vincent Medical Center
19 Affects Seton Medical Center
 Affects O'Connor Hospital Foundation
20 Affects Saint Louise Regional Hospital
Foundation
21 Affects St. Francis Medical Center of
Lynwood Foundation
22 Affects St. Vincent Foundation
 Affects St. Vincent Dialysis Center, Inc.
23 Affects Seton Medical Center
Foundation
24 Affects Verity Business Services
 Affects Verity Medical Foundation
25 Affects Verity Holdings, LLC
 Affects De Paul Ventures, LLC
26 Affects De Paul Ventures - San Jose
Dialysis, LLC Debtors and Debtors In
27 Possession.

LEAD CASE NO.: 2:18-bk-20151-BB

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 Sheri Bluebond

**MOTION FOR RELIEF FROM STAY
AND PLAN INJUNCTIONS**

Hearing Date: January 30, 2024
Time: 10:00 a.m.
Place: Courtroom 1539
15th Floor
Edward R. Roybal Federal Building
& Courthouse
255 E. Temple Street
Los Angeles, CA 90012

INTRODUCTION

1
2 Plaintiff Cindy Campbell (hereinafter “Plaintiff”) is the plaintiff in a Los Angeles
3 Superior Court case captioned *Campbell v. Doe 1, et al.*, Los Angeles Sup. Ct. Case No.
4 22STCV32742, filed Oct. 6, 2022. (See Declaration of Daniel Varon, Esq. (hereinafter “Varon
5 Decl.”), ¶¶ 1-2, Exhibit 1.) Defendant Doe 1, Hospital, in the *Campbell* case is the St. Francis
6 Medical Center. The case arises out of sexual abuse Plaintiff suffered as a minor while at St.
7 Francis in 1976, when she was only 12 years old. (See Complaint, ¶¶ 8-15.) After Plaintiff
8 filed that action, her counsel learned that St. Francis had been a co-debtor in the above-
9 captioned bankruptcy, and was shielded from suit by the stays and permanent injunctions
10 incorporated into the *Modified Second Amended Joint Chapter 11 Plan of Liquidation (Dated*
11 *July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket
12 No. 5466] (hereinafter “the Plan”). (Varon Decl., ¶ 3.) Because of these stays and injunctions,
13 the state court has functionally prevented Plaintiff from amending her Complaint in the state
14 court action to include non-debtor third entity Daughters of Charity (their identity learned after
15 filing to be the controlling entity of St. Francis Medical Center at the time of the abuse at issue
16 in the state court action), even though the Daughters of Charity is not shielded from suit by the
17 Plan of Reorganization. (Varon Decl., ¶ 5.)

18 Specifically, the state court found that the stay on litigation against St. Francis under
19 the Plan extends to the state court reviewing certain Certificates of Merit, required under Code
20 of Civil Procedure Section 340.1 to be vetted by the court, prior to signing the order allowing
21 service of the amended complaint and summons on the Daughters of Charity. (Varon Decl., ¶
22 5.) In doing so, Plaintiff’s case is left in limbo, a non-debtor is being shielded from suit in
23 derogation of the Bankruptcy Code and Ninth Circuit precedent, and an asset of co-Debtor St.
24 Francis’ estate—any potential insurance coverage—is being unlawfully shielded from a
25 creditor in violation of the Plan provisions allowing pursuit of such assets. In justice, fairness,
26 and under the terms of the Plan, the stays and injunctions under the Plan that are blocking the
27 progress of Plaintiff’s lawsuit should be lifted to permit Plaintiff to litigate against the
28

1 Daughters of Charity and to seek any recovery available against any insurance policies
2 possessed by co-Debtor St. Francis Medical Center at the time of Plaintiff's sexual abuse.

3
4 **MOTION**

5 Comes now Plaintiff in the case of *Campbell v. Doe 1, et al.*, Los Angeles Sup. Ct.
6 Case No. 22STCV32742, through undersigned counsel, and respectfully moves this Court, for
7 an order lifting and/or modifying the stays imposed pursuant to the Bankruptcy Code, this
8 Court's orders, and the *Modified Second Amended Joint Chapter 11 Plan of Liquidation (dated*
9 *July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee*, filed
10 August 12, 2020 (Dkt. 5466) (hereinafter "the Plan"), to allow Plaintiff to pursue state court
11 litigation against any insurance policies covering co-Debtor St. Francis Medical Center for the
12 sexual abuse suffered by Plaintiff in or about the year 1976, as well as to add the Daughters of
13 Charity, a California non-profit corporation, as a defendant in that action. This motion is filed
14 pursuant to sections 105, 362(d) and 1141 of title 11 of the United States Code (the
15 "Bankruptcy Code"), Rule 4001 of the Federal Rules of Bankruptcy Procedure and Local Rule
16 4001-1. This Court has jurisdiction as set out below and retains authority to modify and lift the
17 relevant stays pursuant to its authority as a bankruptcy court and its continuing jurisdiction
18 over the Plan and under its terms. The relief requested by Plaintiff here is reasonably necessary
19 to vindicate her rights under the Plan to pursue claims against non-debtor entities and against
20 any insurance policies in effect at the time of loss.

21 **I. JURISDICTION**

22 Under Ninth Circuit precedent, "[a]fter confirmation occurs in a case, the court must
23 apply the 'close nexus' test to determine the bankruptcy court's post-confirmation 'related to'
24 jurisdiction. See *Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire Courtyard)*,
25 729 F.3d 1279, 1287 (9th Cir. 2013). If the proceeding has the required close nexus to the
26 bankruptcy case the bankruptcy court has jurisdiction. *Id.* In applying the close nexus test,
27 matters affecting 'the interpretation, implementation, consummation, execution, or
28

1 administration of the confirmed plan will typically have the requisite close nexus.’ *Montana*
2 *v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005).” *In re Malone*,
3 No. 20-62104-TMR11, 2022 WL 4647575, at *1 (Bankr. D. Or. Sept. 30, 2022). Plaintiff in
4 the third-party action is seeking to implement the provisions of the plan that permit recovery
5 from applicable insurance policies of Debtor St. Francis Medical Center, and the stays remain
6 in place because of the confirmed plan. This motion shows the requisite close nexus to the
7 bankruptcy court’s jurisdiction.

8 Furthermore, the Plan specifically retains jurisdiction in this Court “over all matters
9 arising in, arising under, or related to the Chapter 11 Cases,” including to “determine any
10 motion, ... contested matter, and other litigated matter pending on or commenced after the
11 Effective Date” Plan § 14.1(c), Dkt. 5466 at 66-67. This Court also retained jurisdiction
12 under the Plan to “hear and determine disputes arising in connection with the interpretation,
13 implementation, obligation or enforcement of this Plan,” to “take any action and issue such
14 orders as may be necessary to construe, enforce, implement, execute and consummate this Plan
15 ...,” and “determine such other matters and for such other purposes as may be provided in the
16 Plan and/or the Confirmation Order[.]” Plan 14.1 (k), (l), (m), Dkt. 5466 at 67-68. In seeking
17 to lift the stay imposed under the Plan and in seeking to advance a lawsuit that qualifies as a
18 “Insured Claim” under Section 4.10 of the Plan against any insurance policy of St. Francis
19 Medical Center in existence at the time of Plaintiff’s sexual assault, this Court is squarely
20 within the jurisdiction established in the Plan.

21 **II. STANDARD OF REVIEW**

22 Section 362 of the Bankruptcy Code implements a continuing stay prohibiting any
23 judicial proceeding against any debtor that has filed a petition in bankruptcy for conduct arising
24 pre-petition. 11 U.S.C. § 362(a)(1). Moreover, “Section 362(d)(1) provides that the
25 bankruptcy court, on request of a party in interest and after notice and a hearing, must grant
26 relief from the automatic stay, such as by terminating, annulling, modifying, or conditioning
27 the stay, upon a showing of cause. What constitutes cause for granting relief from the
28

1 automatic stay is decided on a case-by-case basis. *Kronemyer v. Am. Contractors Indem. Co.*
2 (*In re Kronemyer*), 405 B.R. 915, 921 (9th Cir. BAP 2009).” *In re Merriman*, 616 B.R. 381,
3 387 (B.A.P. 9th Cir. 2020) (internal quotation marks omitted). To determine whether cause
4 exists, a bankruptcy court in the Ninth Circuit utilizes the twelve factors outlined in *In re*
5 *Curtis*, 40 B.R. 795, 800 (Bankr. D.Utah 1984). *Kronemyer*, 405 B.R. at 921 (B.A.P. 9th Cir.
6 2009) (approving the *Curtis* factors as “appropriate, nonexclusive, factors to consider in
7 deciding whether to grant relief from the automatic stay to allow pending litigation to continue
8 in another forum”). See *In re PG & E Corporation*, No. BR 19-30088-DM, 2019 WL
9 3889247, at *1 (Bankr. N.D. Cal., Aug. 16, 2019) (applying methodology).

10 **III. LEGAL ARGUMENT**

11 The co-Debtor St. Francis Medical Center in the above-captioned consolidated Chapter
12 11 bankruptcy was sold off as an asset of the main estate of Verity Health Systems. See Order
13 on Motion Enforcing Sale (“Sale Order”), Dkt. 5482 at 1-4. As part of that sale, Prime Health
14 Care System purchased St. Francis free and clear of past obligations and liabilities, subject
15 only to the conditions approved by the Court. See Asset Purchase Agreement Sec. 1.9, Dkt
16 4471, Ex. B at 13 (“Purchaser is not assuming any liabilities of Sellers”). Therefore, the
17 liabilities of St. Francis Medical Center, including Plaintiff’s claim against the facility for her
18 1976 sexual assault, remained in the combined estate of the Debtors in this action and are
19 governed by the Plan.

20 An insurer’s liability to pay injuries under a policy of insurance cannot be revoked,
21 modified, or discharged absent consent of the affected party—it is a liability of the insurer
22 itself, and independent of the insured entity. *Shapiro v. Republic Indem. Co.*, 52 Cal.2d 437,
23 341 P.2d 289, 290 (1959). A non-asbestos bankruptcy plan in the Ninth Circuit cannot
24 discharge the liability of non-debtors. *In re Lowenschuss*, 67 F.3d 1394, 1402 (9th Cir. 1995);
25 *Deocampo v. Potts*, 836 F.3d 1134, 1143 (9th Cir. 2016); 11 U.S.C. § 524(e). Thus, a
26 bankruptcy plan cannot void an injured party’s right to collect against an insurance policy in
27 the Ninth Circuit. For this reason, the Plan sets out a specific means for third parties to collect
28

1 for pre-petition injuries from insurance policies of Debtor entities such as St. Francis Medical
2 Center following confirmation of the Plan.

3 Specifically, under the Plan, the term “Insured Claims means a Claim against any of
4 the Debtors, their respective Estates, Assets or properties arising from any incident or
5 occurrence that is covered by an applicable and available Insurance Policy.” Plan § 1.82, Dkt.
6 5466 at 10. The term “Insurance Policy means any insurance policy maintained by or for the
7 benefit of the Debtors, regardless of whether such Insurance Policy is set forth in a schedule
8 to the Plan Supplement.” Plan § 1.81, Dkt. 5466 at 10. Litigation must proceed for Plaintiff
9 to discover whether any such “Insurance Policy” exists that would cover her injury at St.
10 Francis Medical Center.

11 Following confirmation, “each Holder of an Insured Claim ... shall receive on account
12 of its Insured Claim relief from the automatic stay under § 362 and the injunctions provided
13 under this Plan for the sole and limited purpose of permitting such Holder to seek recovery, if
14 any, as determined and Allowed by an order or judgment by a court of competent jurisdiction
15 or under a settlement or compromise of such Holder’s Insured Claim from the applicable and
16 available Insurance Policies maintained by or for the benefit of any of the Debtors.” Plan §
17 4.10(b), Dkt. 5466 at 29. The specific injunctions and stays preventing Plaintiff’s suit against
18 St. Francis are “all injunctions or stays arising under §§ 105 or 362, any order entered during
19 the Chapter 11 Cases under §§ 105 or 362 or otherwise, and in existence on the Effective
20 Date[.]” Plan § 13.4, Dkt. 5466 at 61. Plaintiff here seeks the lifting of these stays and
21 injunctions to pursue her recovery against the insurance policies, if any, in effect for St. Francis
22 Medical Center in or around 1976. The Plan plainly contemplates and allows such relief to be
23 granted. Litigation against the 1976 owner of St. Francis Medical Center—the Daughters of
24 Charity—must proceed in the event they retained liability for Plaintiff’s Litigation against the
25 1976 owner of St. Francis Medical Center—the Daughters of Charity—must proceed the stay
26 should be lifted as to the Daughters of Charity because it was not a co-Debtor in the above-
27 captioned consolidated Chapter 11 proceedings, and is technically not covered by the stay.
28

1 Nonetheless, the state trial court has determined that the Daughters of Charity cannot be joined
2 unless and until the bankruptcy stay is lifted. (Varon Decl. at ¶ 5.) This Court has jurisdiction
3 to interpret and effectuate the terms of the stay as it applies to this third party non-debtor.

4 Additionally, seven of the twelve *Curtis* factors advocate in favor of lifting the stay,
5 and none argue against it. The first factor, whether “the relief will result in a partial or complete
6 resolution of the issues[.]” *Curtis* 40 B.R. at 799, is present because Plaintiff’s claim against
7 the policy and against the Daughters of Charity will be conclusively established by the state-
8 court litigation. The second factor, a “lack of any connection with or interference with the
9 bankruptcy case[.]” *id.* at 800, is present because suit against the policy and an independent
10 third party will do nothing to alter the sale of St. Francis or the completed liquidation of Verity
11 Health Systems. Third relevant factor, “a specialized tribunal has been established to hear the
12 particular cause of action” and its expertise in the subject matter, *id.*, is inherent in the
13 prosecution of a state-law tort action—something with which the superior court is well-
14 acquainted. *See Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940), cited in
15 *Curtis*, 40 B.R. at 800. The fourth factor at issue here is “[w]hether the debtor’s insurance
16 carrier has assumed full financial responsibility for defending the litigation.” *Curtis*, 40 B.R.
17 at 800. This factor is met because—while California is not a direct action state—the Plan
18 allows that “recovery of insurance proceeds under the applicable Insurance Policy(ies) shall
19 be the sole and exclusive recovery on an Insured Claim[.]” Plan § 4.10(b), Dkt. 5466 at 29.

20 The fifth relevant *Curtis* factor, “prejudice the interests of other creditors,” *Curtis*, 40
21 B.R. at 800, favors Plaintiff here because there is not impact on other creditors from Plaintiff’s
22 state-court lawsuit at all. A sixth factor in favor of lifting the stay, the “interest of judicial
23 economy and the expeditious and economical determination of litigation for the parties[.]” *id.*,
24 plainly weighs in favor of lifting the stay to allow the state court proceeding to advance,
25 because this Court has little capacity to conduct a fact-intensive trial revolving solely around
26 California state tort theories and defenses. The final pertinent factor, “[t]he impact of the stay
27 on the parties and the ‘balance of hurt’[.]” *id.*, swings strongly in favor of the Plaintiff here,
28

1 given that she is being denied her right to recover for a heinous act of sexual assault after being
2 provided a window for such a suit by the 2019 amendments to California Code of Civil
3 Procedure 340.1, which allowed her three years to file a previously time-barred suit against
4 entities responsible for that assault between January of 2020 and December of 2022. Plaintiff
5 timely filed that suit, but has been prevented from prosecuting her valid action due to the
6 imposition of the bankruptcy stay. The only “hurt” to the third-party defendant and the insurer
7 is the ending of their unwarranted period of technical immunity, ostensibly granted by the stay
8 and erroneously enforced by the state trial court.

9 None of the remaining *Curtis* factors—issues like liens, subrogation, and other
10 technical matters—come into play in Plaintiff’s request to lift the stay. This is a state law tort
11 claim that should be prosecuted in the state court. But for the bankruptcy stay, this case would
12 proceed normally. The stays and injunctions should be modified by this Court to allow that
13 litigation to proceed per the Plan.

14 **CONCLUSION**

15 For the foregoing reasons, this Court should lift any relevant stays and injunctions to
16 permit Plaintiff’s case to proceed against any insurance policy maintained by St. Francis
17 Medical Center in or around 1976 that would cover Plaintiff’s injury, and allow Plaintiff to
18 join the Daughters of Charity as a defendant in that action.

19 DATED this 5th day of January, 2024.

20 THE ZALKIN LAW FIRM, P.C.

21
22 *Daniel L. Varon*
23 Daniel Varon, Esq.

1 IRWIN ZALKIN, ESQ. (SBN #89957)
2 DEVIN M. STOREY, ESQ. (SBN #234271)
3 DANIEL VARON, ESQ. (SBN #245318)
4 The Zalkin Law Firm, P.C.
5 10590 West Ocean Air Drive, Suite 125
6 San Diego, CA 92130
7 Tel: 858-259-3011
8 Fax: 858-259-3015
9 Email: irwin@zalkin.com
10 dms@zalkin.com
11 daniel@zalkin.com

12 *Attorneys for Third-Party Plaintiff Cindy Campbell*

13 **UNITED STATES BANKRUPTCY COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA — LOS ANGELES DIVISION**

15 In re:

16 VERITY HEALTH SYSTEM OF
17 CALIFORNIA, INC., et al.,

18 Debtors and Debtors in
19 Possession.

- 20 Affects All Debtors
- 21 Affects Verity Health System of California, Inc.
- 22 Affects O'Connor Hospital
- 23 Affects Saint Louise Regional Hospital
- 24 Affects St. Francis Medical Center
- 25 Affects St. Vincent Medical Center
- 26 Affects Seton Medical Center
- 27 Affects O'Connor Hospital Foundation
- 28 Affects Saint Louise Regional Hospital Foundation
- 29 Affects St. Francis Medical Center of Lynwood Foundation
- 30 Affects St. Vincent Foundation
- 31 Affects St. Vincent Dialysis Center, Inc.
- 32 Affects Seton Medical Center Foundation
- 33 Affects Verity Business Services
- 34 Affects Verity Medical Foundation
- 35 Affects Verity Holdings, LLC
- 36 Affects De Paul Ventures, LLC
- 37 Affects De Paul Ventures - San Jose Dialysis, LLC Debtors and Debtors In Possession.

38 **LEAD CASE NO.: 2:18-bk-20151-BB**

39 Jointly Administered With:

- 40 CASE NO.: 2:18-bk-20162-ER
- 41 CASE NO.: 2:18-bk-20163-ER
- 42 CASE NO.: 2:18-bk-20164-ER
- 43 CASE NO.: 2:18-bk-20165-ER
- 44 CASE NO.: 2:18-bk-20167-ER
- 45 CASE NO.: 2:18-bk-20168-ER
- 46 CASE NO.: 2:18-bk-20169-ER
- 47 CASE NO.: 2:18-bk-20171-ER
- 48 CASE NO.: 2:18-bk-20172-ER
- 49 CASE NO.: 2:18-bk-20173-ER
- 50 CASE NO.: 2:18-bk-20175-ER
- 51 CASE NO.: 2:18-bk-20176-ER
- 52 CASE NO.: 2:18-bk-20178-ER
- 53 CASE NO.: 2:18-bk-20179-ER
- 54 CASE NO.: 2:18-bk-20180-ER
- 55 CASE NO.: 2:18-bk-20181-ER

56 Hon. Judge Sheri Bluebond

57 **MOTION FOR RELIEF FROM STAY
58 AND PLAN INJUNCTIONS**

59 Hearing Date: January 30, 2024
60 Time: 10:00 a.m.
61 Place: Courtroom 1539
62 15th Floor
63 Edward R. Roybal Federal Building
64 & Courthouse
65 255 E. Temple Street
66 Los Angeles, CA 90012

1 I, Daniel L. Varon, declare:

- 2 1. I am an attorney duly licensed to practice law in the State of California and am admitted
3 to practice in the United States Federal Court, Central District of California. I am
4 employed by The Zalkin Law Firm, P.C., and am counsel of record for Plaintiff, Cindy
5 Campbell (hereinafter "Plaintiff") in a Los Angeles Superior Court case captioned
6 *Campbell v. Doe 1, et al.*, Los Angeles Sup. Ct. Case No. 22STCV32742, filed Oct. 6,
7 2022. I am the handling attorney on Plaintiff's case and, as such, am personally
8 familiar the facts and procedural history surrounding her case. If called as a witness to
9 testify, I would competently testify to the facts outlined herein.
- 10 2. Defendant Doe 1, Hospital, in the *Campbell* case is the St. Francis Medical Center.
11 The case arises out of sexual abuse Plaintiff suffered as a minor while at St. Francis in
12 1976, when she was only 12 years old. A true and correct copy of Plaintiff's Complaint
13 is attached hereto as **Exhibit 1**.
- 14 3. After Plaintiff filed and served her action, Defendant failed to answer the complaint.
15 As Plaintiff pursued potential default, the undersigned learned that St. Francis had been
16 a co-debtor in the above-captioned bankruptcy and was shielded from suit by the stays
17 and permanent injunctions incorporated into the *Modified Second Amended Joint*
18 *Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition*
19 *Secured Creditors, and the Committee* [Docket No. 5466] (hereinafter "the Plan").
- 20 4. Thereafter, the undersigned learned that at the time of the sexual abuse alleged in her
21 lawsuit, St. Francis Medical Center was owned and operated by Daughters of Charity.
22 Counsel has not discovered any documentation indicating the Daughters of Charity
23 were discharged in the above-captioned bankruptcy proceeding. As such, Plaintiff
24 amended her complaint to add Doe 2, Hospital Owner/Operator. A true and correct
25 copy of Plaintiff's First Amended Complain is attached hereto as **Exhibit 2**.
- 26 5. Under California Law, Plaintiff is not entitled to serve her lawsuit on the new
27 Defendant absent a court review of Certificates of Merit and issuing an Order to Serve.

1 (See Cal. Cod. Civ. Proc. § 340.1, subd. (i).) The undersigned sought an Order to Serve
2 on 2 separate occasions and discussed the case with the assigned judge. However, the
3 state court declined to address any matter connected with Plaintiff's lawsuit because
4 the stays and injunctions of this bankruptcy. Thus, the state court has functionally
5 prevented Plaintiff from proceeding in her Complaint in the state court action against
6 the non-debtor third entity, Daughters of Charity (their identity learned after filing to
7 be the controlling entity of St. Francis Medical Center at the time of the abuse at issue
8 in the state court action), even though the Daughters of Charity is not shielded from
9 suit by the Plan of Reorganization.

10 I declare under penalty of perjury under the laws of the United States and the State of
11 California that foregoing is true and correct to the best of my knowledge.

12
13 Dated: January 5, 2024

Daniel L. Varon

Daniel Varon, Esq.

EXHIBIT 1

1 DEVIN M. STOREY, ESQ. (#234271)
 2 DANIEL L. VARON, ESQ. (#245318)
 3 TALLIS M. RADWICK, ESQ. (#334924)
 4 The Zalkin Law Firm, P.C.
 5 10590 W. Ocean Air Drive, Suite 125
 6 San Diego CA 92130
 7 Tel: 858-259-3011
 8 Fax: 858-259-3015
 9 Email: dms@zalkin.com
 10 daniel@zalkin.com
 11 tallis@zalkin.com

12 Attorneys for Plaintiff

13
 14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 15 **FOR THE COUNTY OF LOS ANGELES**

16 CINDY CAMPBELL, individually

17 Plaintiff,

18 v.

19 DOE 1, Hospital; and DOES 2, through 100,
20 inclusive,

21 Defendants

22 **CASE NO.: 22STCV32742**

23 **1. NEGLIGENCE**

1 Based upon information and belief available to Plaintiff, Cindy Campbell, a minor at the
2 time of the events giving rise to the facts contained herein, makes the following allegations:

3 **PARTIES**

- 4 1. Plaintiff, Cindy Campbell, is an adult female. Plaintiff was a minor at the time of the
5 sexual abuse alleged herein. At the time the sexual abuse began, Plaintiff was only 12
6 years old.
- 7 2. The perpetrator of the sexual abuse at issue in this action is Donald Howard, born
8 December 8, 1955.
- 9 3. DEFENDANT DOE 1, (“HOSPITAL”) is a medical care facility located at 3630 E
10 Imperial Hwy, Lynwood, California 90262.
- 11 4. DEFENDANT HOSPITAL was at all times relevant operating and doing business in the
12 State of California and within the County of Los Angeles.
- 13 5. DEFENDANT DOES 2 through 100, inclusive, and each of them, are employees and/or
14 agents of DEFENDANT HOSPITAL, who had the responsibility of supervising patients,
15 including Plaintiff, and/or who had a duty to supervise and/or control the conduct of the
16 perpetrator of the sexual abuse and misconduct alleged herein. Each of them owed a legal
17 duty of care to Plaintiff and/or had a duty to control and/or supervise the perpetrator.
- 18 6. The true names and capacities of each DEFENDANT designated herein as DOES 2
19 through 100, whether an individual, business, public entity or some other entity, are
20 presently unknown to Plaintiff, who therefore sues said DEFENDANTS by such
21 fictitious names, pursuant to *Code of Civil Procedure* § 474.
- 22 7. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
23 each of the DEFENDANTS sued herein as DOES 2 through 100, inclusive, was the agent
24 and employee of each of the remaining DEFENDANTS and was at all times acting
25 within the course and scope of such agency and employment with the full knowledge,
26 consent, authority, ratification, and/or permission of each of the remaining
27 DEFENDANTS.
28

BACKGROUND FACTS APPLICABLE TO ALL COUNTS

- 1
- 2 8. Plaintiff was born on May 19, 1976 and is a resident of the state of California.
- 3 9. In approximately 1989, when Plaintiff was 12 years old, she was admitted to the
- 4 psychiatric ward at DEFENDANT DOE 1, a Hospital in Lynwood (referred to herein as
- 5 “the Hospital”), CA as a result of an attempted suicide.
- 6 10. Plaintiff was informed she would be held overnight for observation.
- 7 11. Plaintiff was informed the children’s psychiatric ward and adult women’s wards were
- 8 full. As a result, Plaintiff was placed in the adult men’s ward. Plaintiff went to sleep for
- 9 the night.
- 10 12. During the night, Plaintiff was awakened by Perpetrator, who was unclothed, and forcibly
- 11 digitally penetrating Plaintiff. Plaintiff tried to fight Perpetrator off and scream for help,
- 12 but she was unable to overcome Perpetrator’s size and strength.
- 13 13. Plaintiff continued to scream and fight until finally being able to strike Perpetrator with a
- 14 ceramic peg, at which point he stopped beating and digitally penetrating her. A short time
- 15 later, hospital staff entered the room and removed Perpetrator.
- 16 14. In the aftermath of Plaintiff’s sexual assault, Plaintiff learned the nurse’s station during
- 17 the time of her assault had been left empty.
- 18 15. Police were contacted and arrived to investigate.
- 19 16. Plaintiff was an individual who accepted for treatment through DEFENDANTS and
- 20 received healthcare services from DEFENDANTS.
- 21 17. DEFENDANTS had a duty to provide safe care and professional services to Plaintiff by
- 22 physicians and other health care professionals, including nurses. Plaintiff was a minor at
- 23 the time DEFENDANTS undertook care of Plaintiff, and, as such, DEFENDANTS owed
- 24 Plaintiff a special duty of care.
- 25 18. DEFENDANTS held out any employee of Doe 1 as a competent and skilled individual
- 26 who would care for and treat Plaintiff as required by the standards which are generally
- 27 and customarily accepted within the medical community.
- 28

- 1 19. DEFENDANTS indicated that Doe 1 physicians, nurses, nurse practitioners, and other
2 support personnel would all participate actively in the safe delivery of health care.
- 3 20. Plaintiff is informed and believes, and on that basis alleges, that at the time of the assault
4 Perpetrator was an adult male admitted to the Hospital and was being treated in the adult
5 men’s psychiatric ward where Plaintiff was assigned. As such, DEFENDANTS had a
6 duty to supervise Perpetrator. It was foreseeable to DEFENDANTS that failure to
7 reasonably supervise Plaintiff and/or Perpetrator would likely result in harm to Plaintiff.
- 8 21. Plaintiff is informed and believes, and on that basis alleges, police were contacted and
9 investigated the sexual assault she suffered in approximately 1989.
- 10 22. Plaintiff is informed and believes, and on that basis alleges, Perpetrator was convicted in
11 2005 for sexually molesting a three-year-old-girl. Perpetrator served six years in prison
12 and was required to register as a sex offender.
- 13 23. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer,
14 physical injury, great pain of mind and body, shock, emotional distress, physical
15 manifestations of emotional distress, insomnia, embarrassment, loss of self-esteem,
16 disgrace, humiliation, and loss of enjoyment of life. Plaintiff has developed trust issues
17 and struggles with self-love, intimacy, and relationships. Plaintiff was prevented and will
18 continue to be prevented from performing Plaintiff’s daily activities and obtaining the full
19 enjoyment of life and/or has incurred and continue to incur expenses for medical and
20 psychological treatment, therapy, and counseling.

21
22 **PLAINTIFF’S LAWSUIT IS TIMELY PURSUANT TO CODE OF CIVIL**

23 **PROCEDURE § 340.1**

- 24 24. Plaintiff was a victim of childhood sexual assault by Perpetrator. Plaintiff’s lawsuit is
25 timely pursuant to the provision of *Code of Civil Procedure* § 340.1, which provides an
26 extended period of time for victims of childhood sexual assault to pursue their civil
27 claims. The amendment provides for a three-year revival window beginning on January
28 1, 2020 for “expired” claims.

FIRST CAUSE OF ACTION

NEGLIGENCE

(Against all Defendants)

- 1
- 2
- 3
- 4 25. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.
- 5 26. DEFENDANTS, by and through their agents, servants and employees, took custody of
- 6 Plaintiff when she was admitted to the Hospital. Defendants had care and custody of
- 7 Plaintiff when she was placed in the adult mens ward of the Hospital for supervision.
- 8 This custody of Plaintiff was under circumstances that deprived Plaintiff of normal power
- 9 of self-protection and subjected her to association with persons likely to harm her, such
- 10 as Perpetrator, who was being held in the adult men's psychiatric ward.
- 11 27. DEFENDANTS were responsible for the care, custody, control, supervision, and
- 12 protection of minor patients entrusted to them, including Plaintiff. Thus, DEFENDANTS
- 13 had a duty to adequately and properly supervise, monitor, and protect Plaintiff from
- 14 knowable dangers, such as assault by another inpatient at the psychiatric ward.
- 15 Moreover, because Plaintiff was a minor, DEFENDANTS owed her a special duty of
- 16 care.
- 17
- 18 28. DEFENDANTS also had a duty to adequately and properly supervise and monitor other
- 19 patients in their care, including Perpetrator.
- 20 29. DEFENDANTS had a duty to exercise reasonable care to control the conduct of
- 21 Perpetrator and prevent him from intentionally harming Plaintiff. DEFENDANTS
- 22 created an unreasonable risk of harm to Plaintiff, as they (1) knew or had reason to know
- 23 that they had the ability to control the conduct of Perpetrator, and (2) knew or should
- 24 have known of the necessity and opportunity for exercising such control.
- 25 30. DEFENDANTS breached their duty to properly and adequately supervise, monitor, and
- 26 protect Plaintiff, by in part, placing her, at 12 years old, in the adult men's psychiatric
- 27 ward with insufficient supervision. Further, DEFENDANTS breached their duty by
- 28 leaving the nurses' station unattended at night, knowing that Plaintiff was in a room by

1 herself, and ignoring the dangers posed by unsupervised adult males admitted to the
2 men's psychiatric ward.

3 31. DEFENDANTS knew or had reason to know that Plaintiff, a 12-year-old heavily
4 medicated girl, was at risk of assault in the adult men's psychiatric ward at the Hospital.
5 DEFENDANTS failed to give effective protection, or exercise reasonable vigilance over
6 Plaintiff while she was in their care. DEFENDANTS placed the minor Plaintiff in the
7 adult mens ward under the guise she would be safe because of her proximity to the
8 nurse's station. However, DEFENDANTS left that station unattended, during which time
9 Plaintiff was attacked. Not only did Perpetrator gain initial access to Plaintiff in her room,
10 but he remained there for several minutes while carrying out the violent assault on
11 Plaintiff, who was screaming for help and trying to fight off her attacker. Only after
12 nurses returned to the station did the assault cease.

13 32. Had DEFENDANTS adequately and properly supervised, monitored, and protected
14 Plaintiff, she would not have been harmed.

15 33. DEFENDANTS also recklessly and negligently failed to implement and/or enforce
16 policies and procedures that were aimed at preventing or detecting sexual abuse of their
17 patients, including Plaintiff.

18 34. As a direct and proximate result of the acts and omissions of DEFENDANTS, and each
19 of them, as alleged herein, Plaintiff has suffered, and continues to suffer, physical injury,
20 great pain of mind and body, shock, emotional distress, physical manifestations of
21 emotional distress, insomnia, embarrassment, loss of self-esteem, disgrace, humiliation,
22 and loss of enjoyment of life. Plaintiff has developed trust issues and struggles with self-
23 love, intimacy, and relationships. Plaintiff was prevented and will continue to be
24 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of
25 life and/or has incurred and continue to incur expenses for medical and psychological
26 treatment, therapy, and counseling.
27
28

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS, and each of them,
3 as follows: for damages; for past, present, and future non-economic damages in an amount to be
4 determined at trial; for past, present, and future special damages, including but not limited to
5 past, present, and future lost earnings, economic damages and others, in an amount to be
6 determined at trial; for costs of suit; for statutory/civil penalties according to law; for attorney's
7 fees as allowable by law; and for such other and further relief as the Court may deem proper.

8 **JURY DEMAND**

9 Plaintiff demands a jury trial on all issues so triable.

10 THE ZALKIN LAW FIRM, P.C.

11
12 Dated: 9-8-2022

13 By: Daniel L. Varon
14 Daniel L. Varon
15 Attorneys for Plaintiff
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

DEVIN M. STOREY, ESQ. (#234271)
DANIEL L. VARON, ESQ. (#245318)
LYNDSEY A. GALLAGHER, ESQ. (#284293)
TALLIS M. RADWICK, ESQ. (#334924)
The Zalkin Law Firm, P.C.
10590 W. Ocean Air Drive, Suite 125
San Diego CA 92130
Tel: 858-259-3011
Fax: 858-259-3015
Email: dms@zalkin.com
daniel@zalkin.com
lyndsey@zalkin.com
tallis@zalkin.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CINDY CAMPBELL, individually

Plaintiff,

v.

DOE 1, Hospital; DOE 2, Hospital
Owner/Operator; and DOES 3 through 100,
inclusive,

Defendants

CASE NO.: 22STCV32742

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. NEGLIGENCE

**Judge: Hon. William F. Fahey
Dept.: 69**

Electronically Received 06/06/2023 06:19 PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Based upon information and belief available to Plaintiff, Cindy Campbell, a minor at the
2 time of the events giving rise to the facts contained herein, makes the following allegations:

3 **PARTIES**

- 4 1. Plaintiff, Cindy Campbell, is an adult female. Plaintiff was a minor at the time of the
5 sexual abuse alleged herein. At the time the sexual abuse began, Plaintiff was only 12
6 years old.
- 7 2. The perpetrator of the sexual abuse at issue in this action is Donald Howard, born
8 December 8, 1955.
- 9 3. DEFENDANT DOE 1, (“HOSPITAL”) is a medical care facility located at 3630 E
10 Imperial Hwy, Lynwood, California 90262.
- 11 4. DEFENDANT HOSPITAL was at all times relevant operating and doing business in the
12 State of California and within the County of Los Angeles.
- 13 5. DEFENDANT DOE 2, HOSPITAL OWNER/OPERATOR, owned and operated
14 Defendant Doe 1, Hospital throughout the 1980s and early 1990s, including at the time of
15 the sexual assault described herein.
- 16 6. DEFENDANT DOES 3 through 100, inclusive, and each of them, are employees and/or
17 agents of DEFENDANT HOSPITAL, who had the responsibility of supervising patients,
18 including Plaintiff, and/or who had a duty to supervise and/or control the conduct of the
19 perpetrator of the sexual abuse and misconduct alleged herein. Each of them owed a legal
20 duty of care to Plaintiff and/or had a duty to control and/or supervise the perpetrator.
- 21 7. The true names and capacities of each DEFENDANT designated herein as DOES 2
22 through 100, whether an individual, business, public entity or some other entity, are
23 presently unknown to Plaintiff, who therefore sues said DEFENDANTS by such
24 fictitious names, pursuant to *Code of Civil Procedure* § 474.
- 25 8. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
26 each of the DEFENDANTS sued herein as DOES 2 through 100, inclusive, was the agent
27 and employee of each of the remaining DEFENDANTS and was at all times acting
28

1 within the course and scope of such agency and employment with the full knowledge,
2 consent, authority, ratification, and/or permission of each of the remaining
3 DEFENDANTS.

4 **BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

- 5 9. Plaintiff was born on May 19, 1976 and is a resident of the state of California.
- 6 10. In approximately 1989, when Plaintiff was 12 years old, she was admitted to the
7 psychiatric ward at DEFENDANT DOE 1, a Hospital in Lynwood (referred to herein as
8 “the Hospital”), CA owned and operated by DEFENDANT DOE 2, as a result of an
9 attempted suicide.
- 10 11. Plaintiff was informed she would be held overnight for observation.
- 11 12. Plaintiff was informed the children’s psychiatric ward and adult women’s wards were
12 full. As a result, Plaintiff was placed in the adult men’s ward. Plaintiff went to sleep for
13 the night.
- 14 13. During the night, Plaintiff was awakened by Perpetrator, who was unclothed, and forcibly
15 digitally penetrating Plaintiff. Plaintiff tried to fight Perpetrator off and scream for help,
16 but she was unable to overcome Perpetrator’s size and strength.
- 17 14. Plaintiff continued to scream and fight until finally being able to strike Perpetrator with a
18 ceramic peg, at which point he stopped beating and digitally penetrating her. A short time
19 later, hospital staff entered the room and removed Perpetrator.
- 20 15. In the aftermath of Plaintiff’s sexual assault, Plaintiff learned the nurse’s station during
21 the time of her assault had been left empty.
- 22 16. Police were contacted and arrived to investigate.
- 23 17. Plaintiff was an individual who accepted for treatment through DEFENDANTS and
24 received healthcare services from DEFENDANTS.
- 25 18. DEFENDANTS had a duty to provide safe care and professional services to Plaintiff by
26 physicians and other health care professionals, including nurses. Plaintiff was a minor at
27
28

1 the time DEFENDANTS undertook care of Plaintiff, and, as such, DEFENDANTS owed
2 Plaintiff a special duty of care.

3 19. DEFENDANTS held out any employee of Doe 1 as a competent and skilled individual
4 who would care for and treat Plaintiff as required by the standards which are generally
5 and customarily accepted within the medical community.

6 20. DEFENDANTS indicated that Doe 1 physicians, nurses, nurse practitioners, and other
7 support personnel would all participate actively in the safe delivery of health care.

8 21. Plaintiff is informed and believes, and on that basis alleges, that at the time of the assault
9 Perpetrator was an adult male admitted to the Hospital and was being treated in the adult
10 men's psychiatric ward where Plaintiff was assigned. As such, DEFENDANTS had a
11 duty to supervise Perpetrator. It was foreseeable to DEFENDANTS that failure to
12 reasonably supervise Plaintiff and/or Perpetrator would likely result in harm to Plaintiff.

13 22. Plaintiff is informed and believes, and on that basis alleges, police were contacted and
14 investigated the sexual assault she suffered in approximately 1989.

15 23. Plaintiff is informed and believes, and on that basis alleges, Perpetrator was convicted in
16 2005 for sexually molesting a three-year-old-girl. Perpetrator served six years in prison
17 and was required to register as a sex offender.

18 24. As a result of the above-described conduct, Plaintiff has suffered, and continues to suffer,
19 physical injury, great pain of mind and body, shock, emotional distress, physical
20 manifestations of emotional distress, insomnia, embarrassment, loss of self-esteem,
21 disgrace, humiliation, and loss of enjoyment of life. Plaintiff has developed trust issues
22 and struggles with self-love, intimacy, and relationships. Plaintiff was prevented and will
23 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
24 enjoyment of life and/or has incurred and continue to incur expenses for medical and
25 psychological treatment, therapy, and counseling.
26
27
28

1 **PLAINTIFF'S LAWSUIT IS TIMELY PURSUANT TO CODE OF CIVIL**

2 **PROCEDURE § 340.1**

3 25. Plaintiff was a victim of childhood sexual assault by Perpetrator. Plaintiff's lawsuit is
4 timely pursuant to the provision of *Code of Civil Procedure* § 340.1, which provides an
5 extended period of time for victims of childhood sexual assault to pursue their civil
6 claims. The amendment provides for a three-year revival window beginning on January
7 1, 2020 for "expired" claims.

8 **FIRST CAUSE OF ACTION**

9 **NEGLIGENCE**

10 **(Against all Defendants)**

11 26. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

12 27. DEFENDANTS, by and through their agents, servants and employees, took custody of
13 Plaintiff when she was admitted to the Hospital. Defendants had care and custody of
14 Plaintiff when she was placed in the adult mens ward of the Hospital for supervision.
15 This custody of Plaintiff was under circumstances that deprived Plaintiff of normal power
16 of self-protection and subjected her to association with persons likely to harm her, such
17 as Perpetrator, who was being held in the adult men's psychiatric ward.

18 28. DEFENDANTS were responsible for the care, custody, control, supervision, and
19 protection of minor patients entrusted to them, including Plaintiff. Thus, DEFENDANTS
20 had a duty to adequately and properly supervise, monitor, and protect Plaintiff from
21 knowable dangers, such as assault by another inpatient at the psychiatric ward.
22 Moreover, because Plaintiff was a minor, DEFENDANTS owed her a special duty of
23 care.
24

25 29. DEFENDANTS also had a duty to adequately and properly supervise and monitor other
26 patients in their care, including Perpetrator.

27 30. DEFENDANTS had a duty to exercise reasonable care to control the conduct of
28 Perpetrator and prevent him from intentionally harming Plaintiff. DEFENDANTS

1 created an unreasonable risk of harm to Plaintiff, as they (1) knew or had reason to know
2 that they had the ability to control the conduct of Perpetrator, and (2) knew or should
3 have known of the necessity and opportunity for exercising such control.

4 31. DEFENDANTS breached their duty to properly and adequately supervise, monitor, and
5 protect Plaintiff, by in part, placing her, at 12 years old, in the adult men's psychiatric
6 ward with insufficient supervision. Further, DEFENDANTS breached their duty by
7 leaving the nurses' station unattended at night, knowing that Plaintiff was in a room by
8 herself, and ignoring the dangers posed by unsupervised adult males admitted to the
9 men's psychiatric ward.

10 32. DEFENDANTS knew or had reason to know that Plaintiff, a 12-year-old heavily
11 medicated girl, was at risk of assault in the adult men's psychiatric ward at the Hospital.
12 DEFENDANTS failed to give effective protection, or exercise reasonable vigilance over
13 Plaintiff while she was in their care. DEFENDANTS placed the minor Plaintiff in the
14 adult mens ward under the guise she would be safe because of her proximity to the
15 nurse's station. However, DEFENDANTS left that station unattended, during which time
16 Plaintiff was attacked. Not only did Perpetrator gain initial access to Plaintiff in her room,
17 but he remained there for several minutes while carrying out the violent assault on
18 Plaintiff, who was screaming for help and trying to fight off her attacker. Only after
19 nurses returned to the station did the assault cease.

20
21 33. Had DEFENDANTS adequately and properly supervised, monitored, and protected
22 Plaintiff, she would not have been harmed.

23 34. DEFENDANTS also recklessly and negligently failed to implement and/or enforce
24 policies and procedures that were aimed at preventing or detecting sexual abuse of their
25 patients, including Plaintiff.

26 35. As a direct and proximate result of the acts and omissions of DEFENDANTS, and each
27 of them, as alleged herein, Plaintiff has suffered, and continues to suffer, physical injury,
28 great pain of mind and body, shock, emotional distress, physical manifestations of

1 emotional distress, insomnia, embarrassment, loss of self-esteem, disgrace, humiliation,
2 and loss of enjoyment of life. Plaintiff has developed trust issues and struggles with self-
3 love, intimacy, and relationships. Plaintiff was prevented and will continue to be
4 prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of
5 life and/or has incurred and continue to incur expenses for medical and psychological
6 treatment, therapy, and counseling.

7 **PRAYER**

8 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS, and each of them,
9 as follows: for damages; for past, present, and future non-economic damages in an amount to be
10 determined at trial; for past, present, and future special damages, including but not limited to
11 past, present, and future lost earnings, economic damages and others, in an amount to be
12 determined at trial; for costs of suit; for statutory/civil penalties according to law; for attorney's
13 fees as allowable by law; and for such other and further relief as the Court may deem proper.
14

15 **JURY DEMAND**

16 Plaintiff demands a jury trial on all issues so triable.

17 THE ZALKIN LAW FIRM, P.C.

18 Dated: 6-6-23

19 By: Daniel L. Varon
20 Daniel L. Varon, Esq.
21 Attorneys for Plaintiff
22
23
24
25
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
The Zalkin Law Firm P.C.
10590 W. Ocean Air Dr. Suite 125
San Diego, CA 92130
Tel : 858-259-3011

A true and correct copy of the foregoing document entitled (*specify*):

Notice of Motion and Motion for Relief From Stay and Plan Injunctions

Declaration of Daniel L. Varon In Support of Motion for Relief From Stay and Plan Injunctions;

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 12/29/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Law Offices of Michael D. Gonzalez 101 North Brand Blvd Suite 1880 Glendale, CA 91203

Michael Gonzalez- mgonzalez@mdglaw.net

Lorraine Hall- lhall@mdglaw.net

eservice@mdglaw.net

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

1/5/2024

Date

Michelle Wardell

Printed Name

Michelle Wardell

Signature

SERVICE LIST

Debtor

Verity Health System of California, Inc.

2040 E. Mariposa Avenue

El Segundo, CA 90245

LOS ANGELES-CA

SSN / ITIN: xxx-xx-5484

Tax ID / EIN: 91-2145484

represented by

Sam J Alberts
DENTONS US LLP
1900 K Street NW
Washington, DC 20006
202-408-7004
Fax : 202-496-7756

Armando V Arballo
Browne George Ross O'Brien,
Annaguey & Ellis, LLP
2121 Avenue of the Stars
Ste 2800
Los Angeles, CA 90067
310-274-7100
Fax : 310-275-5697
Email: aarballo@bgrfirm.com
TERMINATED: 09/02/2021

Nicholas C Brown
ASK LLP
2600 Eagan Woods Drive, Suite 400
St Paul, MN 55121

Shirley Cho
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Bl 13th Fl
Los Angeles, CA 90067-4100
310-277-6910
Fax : 310-201-0760
Email: scho@pszjlaw.com

Kerry L Duffy
Bartko Zankel Bunzel & Miller
One Embarcadero Center Ste 800
San Francisco, CA 94111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

415-956-1900
Fax : 415-956-1152
Email: kduffy@bzbm.com

Lawrence B Gill
Nelson Hardiman LLP
1100 Glendon Avenue
Suite 1400
Los Angeles, CA 90024
310-203-2800
Fax : 310-203-2727
Email: lgill@nelsonhardiman.com

Mary H Haas
Davis Wright Tremaine LLP
865 S Figueroa St Ste 2400
Los Angeles, CA 90017
213-633-6800
Fax : 213-633-6899
Email: maryhaas@dwt.com

Roger Kent Heidenreich
Dentons US LLP
211 North Broadway Ste 3000
St Louis, MO 63102

Steven J Kahn
10100 Santa Monica Blvd Ste 13th
Flr
Los Angeles, CA 90067-4003
310-277-6910
Fax : 310-201-0760
Email: skahn@pszyjw.com

Nicholas A Koffroth
Fox Rothschild LLP
10250 Constellation Boulevard
Suite 900
Los Angeles, CA 90067
310-598-4150
Fax : 310-556-9828
Email: nkoffroth@foxrothschild.com
SELF- TERMINATED: 09/16/2022

Anna Kordas
Jones Day - New York

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

250 Vesey Street
New York, NY 10281
212-326-3795
Email: akordas@jonesday.com

Samuel R Maizel
Dentons US LLP
601 South Figueroa Street
Suite 2500
Los Angeles, CA 90017
213-892-2910
Email: samuel.maizel@dentons.com

Patrick Maxcy
Dentons US LLP
233 S Wacker Dr Ste 5900
Chicago, IL 60606

Brigette G McGrath
ASK LLP
2600 Eagan Woods Drive, Suite 400
St Paul, MN 55121

John A Moe, II
Dentons US LLP
601 S. Figueroa Street
Suite 2500
Los Angeles, CA 90017-5704
213-892-4905
Fax : 213-623-9924
Email: john.moe@dentons.com

Claude D Montgomery
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1001
212-768-6700

Tania M Moyron
Dentons US LLP
601 South Figuerora Street
Suite 2500
Los Angeles, CA 90017-5704
213-623-9300
Fax : 213-623-9924
Email: tania.moyron@dentons.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Stephen J O'brien
Dentons US LLP
211 North Broadway Ste 3000
St Louis, MO 63102

Richard Reding
ASK LLP
2600 Eagan Woods Dr Ste 400
St Paul, MN 55121

Robert E Richards
Dentons US LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606

Rosa A Shirley
Nelson Hardiman LLP
1100 Glendon Avenue
Suite 1400
Los Angeles, CA 90024
310-203-2800
Fax : 310-203-2727
Email: rshirley@nelsonhardiman.com
TERMINATED: 01/16/2020

Gary D Underdahl
ASK LLP
2600 Egan Woods Dr, Ste 400
Eagan, MN 55121
651-406-9665
Fax : 651-406-9676

Trustee

Howard Grobstein Liquidating Trustee (Verity)
Grobstein Teeple LLP
6300 Canoga Avenue, Suite 1500W
Woodland Hills, CA 91367
818.532.1020

represented by **James Cornell Behrens**
Milbank LLP
2029 Century Park East
33rd Floor

Los Angeles, CA 90067
424-386-4436
Fax : 213-892-4736
Email: jbehrens@milbank.com

1
2
3
4
5 **Trustee**
Howard Grobstein, Plaintiff

represented **Gary D Underdahl**
by (See above for address)

6
7 **U.S. Trustee**
United States Trustee (LA)
8 915 Wilshire Blvd, Suite 1850
9 Los Angeles, CA 90017
10 (213) 894-6811

represented **Kenneth G Lau**
by Office of the United States Trustee
125 Ottawa Avenue NW
Suite 200R
Grand Rapids, MI 49503
616-456-2002
Fax : 616-456-2550
Email: kenneth.g.lau@usdoj.gov
12 *TERMINATED: 09/02/2021*

13
14 **Alvin Mar**
915 Wilshire Boulevard, Ste 1850
Los Angeles, CA 90017
213-894-4219
Fax : 213-894-2603
Email: alvin.mar@usdoj.gov

15
16
17
18 **David Samuel Shevitz**
Office of the United States Trustee
915 Wilshire Blvd.
Ste 1850
Los Angeles, CA 90017
213-894-3240
Fax : 213-894-2603
Email: David.S.Shevitz@usdoj.gov

19
20
21
22
23 **Hatty K Yip**
Office of the UST/DOJ
915 Wilshire Blvd., Suite 1850
Los Angeles, CA 90017
213-894-1507
Fax : 213-894-2603
Email: hatty.yip@usdoj.gov

1 **Creditor Committee**
2 **Official Committee of Unsecured**
3 **Creditors of Verity Health System of**
4 **California, Inc., et al.**

represented by **Alexandra Achamallah**
Milbank LLP
2029 Century Park East
Los Angeles, CA 90067
424-386-4000
Fax : 213-629-5063
Email: aachamallah@milbank.com

5
6 **James Cornell Behrens**
(See above for address)

7 **Daniel Denny**
8 Milbank LLP
9 2029 Century Park East, 33rd
10 Floor
11 Los Angeles, CA 90067-3019
12 4243864000
Fax : 2136295063
Email: ddenny@milbank.com

13 Counsel for Defendant, St. Francis Medical Center

14 Represented by **Michael D. Gonzalez**
15 The Law Offices of Michael D.
16 Gonzalez
17 101 North Brand Blvd Suite
18 1880
19 Glendale, CA 91203
818-844-0188
Email: mgonzalez@mdglaw.net

20 **Lorraine Hall**
21 (See above for address)