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Attorneys for Howard M. Ehrenberg, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re

BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY
HOSPITAL, a nonprofit public benefit
corporation,¹

Debtor.

Case No. 2:23-bk-12359-SK

Chapter 11

Jointly administered with:

Case No. 2:23-bk-12360-SK

Case No. 2:23-bk-12361-SK

**CHAPTER 11 TRUSTEE'S OPPOSITION
TO MOTION FOR RELIEF FROM THE
AUTOMATIC STAY UNDER 11 U.S.C. §
362 (ACTION IN NON-BANKRUPTCY
FORUM)**

DATE: January 24, 2024

TIME: 8:30 a.m.

PLACE: Courtroom "1575"

- ☐ Affects all Debtors
- ☒ Affects Beverly Community Hospital
Association
- ☐ Affects Montebello Community Health
Services, Inc.
- ☐ Affects Beverly Hospital Foundation

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Boulevard, Montebello, California 90640.



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Howard M. Ehrenberg (the “Trustee”), the duly appointed, qualified, and acting chapter 11 trustee for the estates of the jointly administered debtors Beverly Community Hospital Association, dba Beverly Hospital, a nonprofit public benefit corporation (“Beverly Community”), Montebello Community Health Services, Inc. (“Montebello Health”), and Beverly Hospital Foundation (“Beverly Foundation”) (collectively and interchangeably, the “Debtor” or “Debtors”), herby submits his “Chapter 11 Trustee’s Opposition to Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Action in Non-Bankruptcy Forum)” (the “Opposition”), in response to the “Notice of Motion and Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (with supporting declarations) (Action in Non-Bankruptcy Forum)” (the “Motion”), filed by Eloy Sanchez, individually and as successor-in-interest for Eva Sanchez, Olga Bautista, Jose Sanchez and Alvaro Sanchez (collectively, the “Sanchez Parties”) and represents as follows:

I.

PREFATORY STATEMENT

The Motion seeks relief from the automatic stay for “cause” under 11 U.S.C. § 362(d)(1) so that the Sanchez Parties may proceed with a state court action filed months *after* the petition date, for a cause of action which arose in August, 2022, several months *prior* to the petition date. Glossing over their blatant stay violation, the Sanchez Parties argue that the stay should be lifted and annulled so that they may proceed with the action. They seek to recover from applicable insurance, but do not agree to waive any deficiency or other claim against the Debtors or property of the Debtors’ estates. Despite their arguments, there is a total absence of “cause” warranting relief from stay at this time.

While the relief sought may seem innocuous on its face, within the facts and circumstances of these cases, it assuredly is not. The Sanchez Parties’ action is just one of at least twenty-four pending, pre-petition lawsuits filed against the Debtors, and the Trustee has reason to believe that more claims may be asserted by contingent creditors

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1 based on tort claims.² While the claims of these current plaintiffs and contingent tort
2 creditors may be covered under the Debtors' applicable insurance policies, there may not
3 be sufficient coverage under these policies for all such claims. As the Trustee has
4 pointed out in response to similar stay requests, granting the Motion at this time will
5 create a chaotic and unfair "race" to the policy coverages which is both inefficient and
6 inequitable in the context of these cases.

7 Moreover, the relief sought by the Sanchez Parties would not extinguish the
8 need for the Trustee to substantially engage in the action by, at a minimum, responding
9 to discovery or other information requests that are necessary to resolve the merits of the
10 Sanchez Parties' contested claims. If the Sanchez Parties are given such access, there
11 is no question that this will open the floodgates for all other litigants to seek the same
12 relief. Such a result would defeat one of the Debtors' objectives for commencing these
13 cases in the first place - to obtain a sufficient breathing spell to reorganize or liquidate in
14 an orderly fashion without the enormous pressures and time demands placed on the
15 Debtors' operations by the twenty-four, and possibly more, litigants.

16 If relief from stay is granted, the Trustee would, in all likelihood, have to
17 retain litigation counsel - incurring additional administrative claims in cases already
18 burdened by significant professional fee claims - to respond to the complaint and
19 discovery. With just a few months having elapsed since the Trustee was appointed, such
20 a result would be an inefficient use of the estates' limited resources. Besides, the
21 Sanchez Parties certainly are free to simply file a proof of claim that will be reviewed and
22 handled as part of the claims and distribution process. As such, no "cause" exists for
23

24 ² According to the Debtors' "Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy" (the
25 "SOFAs") [Docket No. 372] there were no less than twenty-four pending actions against the Debtors as of
26 the petition date. Pursuant to Rule 201 of the Federal Rules of Evidence, the Court is respectfully
27 requested to take judicial notice of Attachment 7 to the SOFAs. However, as the Debtors themselves
28 noted in the SOFAs, the "[i]nformation provided on SOFA 7 includes only those legal disputes and
administrative proceedings that are formally recognized by an administrative, judicial, or other adjudicative
forum. While the Debtors believe they were diligent in their efforts, it is possible that certain suits and
proceedings may have been inadvertently excluded in the Debtors' response on SOFA 7."

1 granting the relief sought, and the Motion should be denied, without prejudice, with a bar
2 to re-filing for at least 120 days.

3 **II.**

4 **BACKGROUND**

5 **A. The Bankruptcy Cases**

6 On April 19, 2023 (the “Petition Date”), each of the Debtors filed a voluntary
7 petition for relief under chapter 11 of title 11 of the United States Code. On May 10,
8 2023, the Office of the United States Trustee (the “OUST”) appointed an official
9 committee of unsecured creditors.

10 On August 7, 2023, the Debtors caused to be filed their “Notice of Motion
11 and Motion for Entry of An Order (I) Authorizing the Sale of Substantially all of the
12 Debtors’ Assets Free and Clear of All Liens, Claims, and Encumbrances; to White
13 Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear; (II)
14 Authorizing the Assumption and Assignment of Certain Executory Contracts and
15 Unexpired Leases, and (III) Granting Related Relief” (the “Sale Motion”) [Docket No.
16 638]. The Sale Motion sought, among other things, approval of that certain “Asset
17 Purchase Agreement” (the “APA”), dated as of August 7, 2023, by and between Beverly
18 Community and Montebello Health, as sellers, and White Memorial Medical Center d/b/a
19 Adventist Health White Memorial (“AHWM”), as buyer.

20 Eleven days later, on August 18, 2023, the Court entered its “Order (A)
21 Authorizing the Sale of Debtors’ Assets to Purchaser Free and Clear of Liens, Claims,
22 Interests, and Other Interests; (B) Approving the Assumption and Assignment of
23 Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related
24 Relief” (the “Sale Order”) [Docket No. 718] granting the Sale Motion, approving the APA,
25 and authorizing the Debtors’ proposed sale to AHWM pursuant to 11 U.S.C. §§ 105(a),
26 363, and 365, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of
27 Bankruptcy Procedure, and Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules for
28 the Central District of California.

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On September 7, 2023, the Debtors caused to be filed their “Notice of Closing of Sale to White Memorial Medical Center d/b/a Adventist Health White Memorial” [Docket No. 789] pursuant to which, among other things, the Debtors reported that, pursuant to Section 1.3 of the APA, the Closing (as defined in the APA) of the sale to AHWM occurred on September 6, 2023 (the “Closing Date”), with an Effective Time (as defined in the APA) of 12:01 a.m. (Pacific Time) on September 7, 2023. Days later, U.S. Bank Trust Company, National Association, as Master Trustee (“U.S. Bank”) caused to be filed “U.S. Bank Trust Company, National Association, As Master Trustee’s Emergency Request for Status Conference and Order to Show Cause Why A Chapter 11 Trustee Should Not Be Appointed” (the “OSC”) [Docket No. 791].

The OSC was granted by the Court pursuant to its “Order Directing the Appointment of A Chapter 11 Trustee and Setting Hearing and Briefing Schedule on Fee Applications” entered on September 13, 2013 [Docket No. 803]. Thereafter, the OUST filed its “Application for Order Approving Appointment of Trustee and Fixing Bond” [Docket No. 813] and the same day the Court entered its “Order Approving the Appointment of A Chapter 11 Trustee” [Docket No. 815]. As a result of the foregoing, Howard M. Ehrenberg became the duly appointed, qualified, and acting chapter 11 trustee for the Debtors’ jointly administered estates, and he continues to act in this capacity.

B. The State Court Action

On October 12, 2023, nearly six months *after* the Petition Date, the Sanchez Parties filed a lawsuit against the Debtor and non-debtor Adventist Health (the “State Court Complaint”). A copy of the State Court Complaint is attached to “Creditor, Eloy Sanchez, et al’s Exhibit “A” to the Declaration of Benjamin Ikuta Re: Motion for Relief from Automatic Stay” [Dkt No. 872]. The State Court Complaint alleges, among other things, that Ms. Sanchez passed away while under the care of Beverly Hospital in August 2022, eight months *prior* to the Petition Date. The plaintiffs in the action (the “Plaintiffs”) are relatives of Ms. Sanchez, and are represented by the law firm, Ikuta

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1 Hemesath, LLP. The attorneys at Ikuta Hemesath, LLP listed on the caption of the State
2 Court Complaint are Benjamin Ikuta and Michelle B. Hemesath. Immediately upon being
3 made aware of the State Court Complaint, at 4:26 p.m. on October 19, 2023, counsel for
4 the Trustee sent a routine letter to Mr. Ikuta and Ms. Hemesath advising them that the
5 filing of the State Court Complaint was a violation of the stay, and demanding that it be
6 dismissed. Mr. Ikuta and Ms. Hemesath were also advised that the Trustee was
7 reserving the right to seek the imposition of sanctions for the stay violation if the actin
8 was not dismissed. A true and correct copy of the letter to Mr. Ikuta and Ms. Hemesath is
9 attached hereto as Exhibit 1. Instead of recognizing the clear stay violation and agreeing
10 to the request, at 5:14 p.m. on the same day, Mr. Ikuta responded by stating as follows:

11 “We will not dismiss. We look forward to your filing
12 requesting sanctions against us. Your letter has absolutely
13 no weight given that you by your own admission, you do not
14 represent Defendants in this action. Please include
15 service@ih-llp.com on future emails.

16 *Keep pounding your chest there big guy.”*

17 A true and correct copy of Mr Ikuta’s email is attached hereto as Exhibit 2.

18 Following the surprisingly hostile response to the Trustee’s routine stay
19 violation notice, email dialogue continued between the Trustee’s counsel and Mr. Ikuta,
20 after which the Sanchez Parties compounded their stay violations by serving the hospital
21 with the State Court Complaint. As it became evident that the Sanchez Parties would not
22 dismiss their complaint despite the Trustee’s repeated requests, the Trustee’s counsel
23 began preparing pleadings seeking sanctions against the Sanchez Parties and their
24 counsel for their blatant stay violations.

25 However, prior to formally requesting sanctions, the Sanchez Parties
26 retained bankruptcy counsel, and thereafter filed the Motion. Upon receipt of the Motion,
27 the Trustee’s counsel met and conferred with the Sanchez Parties’ bankruptcy counsel
28

1 and an agreement was reached to continue the hearing on the Motion to the current
2 hearing date.

3 At this time, the Trustee remains focused on the numerous issues
4 associated with administering these estates, including monitoring the substantial post-
5 closing issues related to the sale with AHWM. As such, requiring the Trustee to respond
6 to a lawsuit that was filed in violation of the stay should not be one of the items that draws
7 attention away from the other serious, time-sensitive issues confronting the Trustee,
8 particularly when there are countless other pending tort actions.

9 **III.**

10 **THERE IS NO "CAUSE" WARRANTING RELIEF FROM STAY**

11 "A bankruptcy filing imposes an automatic stay of all litigation against the
12 debtor." In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990) (citing 11 U.S.C.
13 § 362(a)). Section 362(d)(1) provides that a court "shall grant relief from the stay ... by
14 terminating, annulling, modifying, or conditioning such stay - for cause, including the lack
15 of adequate protection of an interest in property of such party in interest." Upon a
16 showing of "cause," a court shall grant relief from the automatic stay. Benedor Corp. v.
17 Conejo Enterprises, Inc. (In re Conejo Enterprises, Inc.), 96 F.3d 346, 352 (9th Cir.
18 1996).

19 "Because there is no clear definition of what constitutes 'cause',
20 discretionary relief from the stay must be determined on a case by case basis." Piombo
21 Corp. v. Castlerock Properties (In re Castlerock Properties), 781 F.2d 159, 163 (9th Cir.
22 1986). "Among factors appropriate to consider in determining whether relief from the
23 automatic stay should be granted to allow state court proceedings to continue are
24 considerations of judicial economy and the expertise of the state court ... as well as
25 prejudice to the other parties and whether exclusively bankruptcy issues are involved."
26 Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer), 405 B.R. 915, 921
27 (B.A.P. 9th Cir. 2009).

Courts have also adopted twelve non-exclusive factors to determine whether the stay should be lifted (the “Plumberex factors”) to permit pending litigation to continue in another forum. Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.), 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004). The Plumberex factors include:

- whether the relief will result in a partial or complete resolution of the issues;
- the lack of any connection with or interference with the bankruptcy case;
- whether the foreign proceeding involves the debtor as a fiduciary;
- whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation;
- whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- whether the litigation in another forum would prejudice the interests of other creditors, the creditors’ committee and other interested parties;
- whether the judgment claim arising from the foreign action is subject to equitable subordination under 11 U.S.C. § 510(c);
- whether movant’s success in the foreign proceeding would result in a judicial lien avoidable by the debtor under 11 U.S.C. § 522(f);
- the interests of judicial economy and the expedition and economical determination of litigation for the parties;
- whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- the impact of the stay on the parties and the “balance of hurt.”

1 “In weighing the relevant factors, the bankruptcy court is not required to
2 give equal weight to all factors. In fact, the balancing of potential harm to the creditor on
3 the one hand and to the debtor and the bankruptcy estate on the other hand frequently is
4 dispositive.” Lapierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.), 2016
5 WL 6958130, at *4 (B.A.P. 9th Cir. Nov. 28, 2016).

6 Here, there can be no doubt that the Plumberex factors favor denial of the
7 Motion.

8 First, “relief from stay will not fully resolve the issues.” Given the magnitude
9 of the known litigation claims against the Debtors, it remains unclear whether insurance
10 will be able to cover the total amount of insured claims in these cases. As a result,
11 granting relief from the automatic stay to a single litigant at this time will result in a race to
12 insurance policies whereby early litigants (including the Sanchez Parties, who, as noted,
13 filed their action in violation of the stay) potentially exhaust the available insurance pool to
14 the detriment of other litigants.³ To address this issue, the Trustee will be consulting with
15 other litigants and the insurers to determine if a streamlined process can be agreed to by
16 which these litigation claims can be estimated and/or liquidated for purposes of voting
17 and plan distribution in a uniform manner in the event a plan of reorganization is filed so
18 there is no unfair advantage to certain litigants over others. Accordingly, the first
19 Plumberex factor weighs in favor of denial of the Motion.

20 Second, the action undoubtedly interferes with the Trustee’s administration
21 of these estates. Since his appointment, the Trustee has been working diligently to
22 ascertain the nature and extent of the Debtors’ assets and liabilities, the issues relating to
23 the closing of the sale to AHWM, numerous reporting and compliance issues, and other
24 substantive administrative issues resulting from the bankruptcy filings, such as

25 _____
26 ³ Importantly, the Debtors’ policies have a \$50,000 SIR (“self-insured retention”). In insurance parlance,
27 SIRs are the dollar amounts specified in liability insurance policies that must be paid by the insured before
28 the insurance policy will respond to a loss. In other words, if the claim of the Sanchez Parties, or any other
tort claimant, is not worth more than \$50,000, nothing will get paid to the claimant now as the estates
simply do not have \$50,000 to pay any pre-petition claims at this time, and they may not in the future.

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1 coordinating with U.S. Bank regarding the payment of ongoing expenses, addressing
2 issues with AHWM, remaining employees, critical vendors, and other creditors. If the
3 Court grants the Motion, the Trustee will be required to detract his efforts to respond to
4 the State Court Complaint to comply with information requests and demands for
5 discovery, in addition to possibly defending the State Court Complaint.

6 As noted, there were at least twenty-four pending lawsuits as of the Petition
7 Date, and at least two, including the one filed by the Sanchez Parties, were filed post-
8 petition. Allowing the Sanchez Parties to obtain relief from stay would open the
9 floodgates for all other litigants to seek relief from stay or encourage other parties to file
10 actions in violation of the stay, thereby undercutting the protections sought by the
11 Debtors when these chapter 11 cases were first filed.

12 In responding to previous motions for relief from stay, the Trustee sought a
13 reasonable breathing spell to focus on his administration and exit strategies for these
14 cases, without the distraction of addressing multiple litigation matters and all of the work
15 attendant to them. While the Court indulged the Trustee's request in this regard,
16 continuing two hearings until the present date, the Trustee still requires additional time.
17 In particular, as just noted, the Trustee is attempting to meet with the Debtors' insurance
18 carrier to discuss a protocol for addressing the multiple claims being made against the
19 Debtors that may be subject to coverage. The Trustee requires additional time before
20 relief from stay is granted for any litigant to proceed with their claims. The prejudice to
21 the Trustee and the estates, therefore, militates in favor of denying the Motion.

22 Third, the nature of the proceedings in the action do not involve fiduciary
23 duty claims. As evident by the complaint attached to the Motion, no breach of fiduciary
24 duty claim has been made by the Sanchez Parties. Thus, the third Plumberex factor
25 weighs in favor of denying the Motion.

26 Fourth, a specialized tribunal has not been established to adjudicate the
27 claims raised in the action. The action will be presided over, if at all, by the Los Angeles
28 County Superior Court, which is not a "specialized tribunal" for purposes of this legal

1 analysis. Moreover, any contention that there are unique and specialized code sections
2 and regulations applicable to the care to be provided by hospitals that the Superior Court
3 is better equipped to adjudicate would be sheer conjecture. Thus, this factor weighs in
4 favor of denying the Motion.

5 Fifth, since the legal and factual bases of Sanchez Parties' claims have not
6 been fully ascertained, it is unclear and uncertain whether any of the Debtors' current
7 insurance policies will cover such claims. If the claims are covered, there are a huge
8 number of other potential litigants and creditors in these cases such that granting the
9 Motion will inevitably lead to a race to the applicable insurance policies that potentially
10 undermines other litigants' recoveries. Moreover, the estates may incur substantial
11 deductibles and other costs under the applicable insurance policies. This factor,
12 therefore, also weighs in favor of denying the Motion.

13 Sixth, the estate's function in the action would not solely be as a bailee or
14 conduit. Thus, this factor weighs in favor of denial of the Motion.

15 Seventh, allowing the parties to resolve their disputes in the context of the
16 Debtors' bankruptcy cases will not prejudice Sanchez Parties and will protect the
17 interests of all other creditors in these jointly administered cases. Conversely, granting
18 relief from stay will prejudice other creditors and litigants by allowing the Sanchez Parties
19 to potentially drain the available insurance pool.

20 Eighth, it is unclear whether any judgment obtained by Sanchez Parties
21 would be subject to equitable subordination under 11 U.S.C. § 510(c). This factor,
22 therefore, is neutral or simply inapplicable.

23 Ninth, it is uncertain whether judgment claims arising from the State Court
24 Complaint would result in judicial liens avoidable by the estates. Therefore, this factor
25 also is neutral or not applicable.

26 Tenth, the interests of judicial economy and the expeditious and economical
27 determination of litigation for the parties weighs in favor of denying the Motion. As
28 illustrated, the Trustee is extremely focused on the administration of these estates and

1 would prefer to deal with the litigation claims in a uniform manner without discrimination.
2 Having this Court oversee the claims allowance process is inherently more efficient and
3 fair than allowing the Sanchez Parties and other litigants to proceed with their litigation
4 against the Debtors in multiple, separate, pre-petition and post-petition state court cases,
5 instead of in a single forum before this Court.

6 Eleventh, the action (which was just filed in October, 2023) surely is
7 nowhere close to being ready for trial, and, for obvious reasons, a trial date has not been
8 set. Denying the Motion, therefore, will not prejudice the Sanchez Parties.

9 Finally, the balance of harm weighs in favor of denying the Motion. The
10 Debtors filed these bankruptcy cases, in part, to gain a breathing spell from the
11 avalanche of litigation they were facing. Granting relief from stay at this juncture, would
12 be unreasonable, would give the Sanchez Parties a potential windfall vis-a-vis other
13 similarly situated litigants and creditors, and would deprive the estates of significant
14 bankruptcy protections.

15 Simply put, the Motion is premature and would harm other litigants and
16 creditors while severely undermining the Trustee's efforts to effectively administer these
17 cases. In similar circumstances, courts have found that granting relief from stay is
18 inappropriate where the bankruptcy case is in its early stages. "When considering an
19 early filed motion for relief under [section 362(d)(1)], the Court first determines, under the
20 facts presented, whether the reorganization in these early stages would be objectively
21 futile" In re C.C. Rider, Inc., 1997 WL 33344313, at *2 (Bankr. D.S.C. Aug. 19, 1997).
22 "[I]f the relief from stay is requested at the early stages of the bankruptcy case, the
23 burden upon the debtor is less stringent. But, if relief from stay is requested later in the
24 case, the debtor's showing is closely scrutinized." Sumitomo Trust & Banking Co. v.
25 Grant Rapids Hotel, L.P., 140 B.R. 643, 700 (Bankr. W.D. Mich. 1992). "The longer the
26 case goes on, the more the analysis may change and the balance of competing interests
27 may compel a different result." Chrysler LLC v. Plastech Engineered Prods., Inc., 382
28 B.R. 90, 109 (Bankr. E.D. Mich. 2008).

1 C.C. Rider, Sumitomo Trust, and Plastech Engineered Prods. reinforce the
2 general proposition that, at the early stages of a bankruptcy case, a creditor's motion for
3 relief from stay should be closely scrutinized to ensure that the estates are provided
4 sufficient breathing space to reorganize. This applies with equal force to a chapter 11
5 trustee who was just appointed and is now burdened with the administration of these
6 estates, which may include proposing a plan of reorganization.

7 In sum, the Motion fails to withstand this close scrutiny and the Sanchez
8 Parties have not shown that "cause" exists to grant relief from stay under Section
9 362(d)(1). The Plumberex factors and aforementioned case law all support denial of the
10 Motion, without prejudice. This result ensures that the Trustee has the necessary time to
11 effectively administer these estates for all creditors.

12 **IV.**

13 **CONCLUSION**

14 The Trustee recognizes that at some point in the future, it may be
15 appropriate to allow the Sanchez Parties and other similarly situated claimants to
16 proceed with the litigation of their claims, whether in this Court or in a non-bankruptcy
17 forum. However, now is not the time. The Trustee needs an opportunity to discuss the
18 various pending litigation items with the Debtors' insurance carriers to develop a strategy
19 that will allow a uniform and fair approach to the administration of these types of claims.
20 Accordingly, the Trustee requests that the Court either deny the Motion, without
21 prejudice, with a bar to re-filing for at least 120 days, or in the alternative, that the Court
22 continue the hearing on the Motion for 90-120 days.

23 DATED: January 10, 2024

Greenspoon Marder LLP

25 By: /s/ Mark S. Horoupian

Daniel A. Lev

Mark S. Horoupian

Elissa D. Miller

Attorneys for Howard M. Ehrenberg, Chapter
11 Trustee

DECLARATION OF MARK S. HOROUPIAN

I, Mark S. Horoupian, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner at Greenspoon Marder LLP, attorneys of record for Howard M. Ehrenberg, Chapter 11 Trustee. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

2. Attached hereto as Exhibit 1 is a true and correct copy of my letter dated October 19, 2023, to Mr. Ikuta and Ms. Hemesath in which I advised them that the filing of the State Court Complaint was a violation of the Stay.

3. Attached hereto as Exhibit 2, is a true and correct copy of Mr. Ikuta's reply to my letter, which I received at 5:14 p.m. on October 19, 2023.

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

Executed on this 10th day of January, 2024, at Los Angeles, California.



Mark S. Horoupian

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EXHIBIT 1



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October 19, 2023

Benjamin T. Ikuta, Esq. (SBN: 260878)
Michelle B. Hemesath, Esq. (SBN: 286168)
IKUTA HEMESATH LLP
1327 North Broadway
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Ben@ih-llp.com
michelle@ih-llp.com

RE: Sanchez v. Beverly Hospital, et al (Case No. 23STCV24966)—NOTICE OF
VIOLATION OF AUTOMATIC STAY

Dear Mr. Ikuta and Ms. Hemesath:

I am counsel for Howard M. Ehrenberg, the chapter 11 trustee for the bankruptcy estates of Beverly Community Hospital Association dba Beverly Hospital ("Beverly Hospital"), Montebello Community Health Services, and Beverly Hospital Foundation (collectively, the "Beverly Debtors"). On April 19, 2023, the Beverly Debtors each filed a voluntary chapter 11 petition (collectively, the "Petitions") in the Central District of California, Los Angeles Division. The cases are jointly administered under case number 2:23-bk-12359-SK.

We have been forwarded a copy of the complaint (the "Complaint") that you filed on behalf of your clients Eloy Sanchez, individually and as successor-in-interest for Eva Sanchez, Olga Bautista, Jose Sanchez and Alvaro Sanchez against Beverly Hospital and Adventist Health White Memorial Montebello ("Adventist") (Case No. 23STCV24996). Please note that we do not represent Adventist's interests with respect to this matter.

By reason of the filing of the Petitions, under Section 362(a) of the United States Bankruptcy Code, there is an automatic stay against the "commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor [Beverly Hospital] that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the" bankruptcy case. 11 U.S.C. Section 362(a)(1). Acts taken in violation of the automatic stay under are considered either void or voidable. The incident which you

October 19, 2023
Benjamin T. Ikuta, Esq.
Michelle B. Hemesath, Esq.
Page No. 2

allege gives rise to liability of Beverly Hospital to your clients took place several months before the filing of the Petitions. As such, there is no question that the filing of the Complaint was a clear violation of the automatic stay.

You were well aware of the Petitions, as indicated by Paragraph 36 of the Complaint where you specifically acknowledged Beverly Hospital's bankruptcy filing, yet you filed the Complaint anyway. The filing of the Complaint was a knowing and willful violation of the automatic stay. The Trustee hereby demands that you immediately dismiss the Complaint against Beverly Hospital. We reserve the right to seek the imposition of sanctions against you and your clients for your willful violation of the automatic stay, as well as to seek all other appropriate remedies.

Sincerely,

GREENSPOON MARDER LLP



Mark S. Horoupian, Partner

MSH

Cc: Howard M. Ehrenberg, Trustee
Elissa Miller, Esq.
Daniel Lev, Esq.

EXHIBIT 2

Mark Horoupian

From: Benjamin Ikuta <ben@ih-llp.com>
Sent: Thursday, October 19, 2023 5:14 PM
To: Mark Horoupian; Service
Cc: michelle@ih-llp.com; Howard Ehrenberg; Daniel Lev; Elissa Miller; Cheryl Caldwell; {F15549450}.Active@gmlaw.imanage.work
Subject: Re: Beverly Hospital adv. Sanchez -- Violation of Automatic Stay [IMAN-ACTIVE.FID15549450]
Attachments: image001.png

This Message Is From an Unknown Sender

You have not previously corresponded with this sender.

Mr. Horoupian,

We will not dismiss. We look forward to your filing requesting sanctions against us. Your letter has absolutely no weight given that you by your own admission, you do not represent Defendants in this action. Please include service@ih-llp.com on future emails.

Keep pounding your chest there big guy.

Benjamin T. Ikuta



IKUTA HEMESATH LLP

Medical Malpractice Attorneys

1327 N Broadway

Santa Ana, CA 92706

Phone: (949) 229-5654 / (877) Med-Mal8

Cell: (310) 351-3889

Fax: (949) 203-2162

ben@ih-llp.com

On Thu, Oct 19, 2023 at 4:26 PM Mark Horoupian <Mark.Horoupian@gmlaw.com> wrote:

Counsel,

Please see the attached important correspondence regarding the Sanchez v. Beverly Hospital law suit you are handling.

Thank you,

GREENSPOON MARDER LLP LEGAL NOTICE

The information contained in this transmission may be attorney/client privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply e-mail.

Unless specifically indicated otherwise, any discussion of tax issues contained in this e-mail, including any attachments, is not, and is not intended to be, "written advice" as defined in Section 10.37 of Treasury Department Circular 230.

A portion of our practice involves the collection of debt and any information you provide will be used for that purpose if we are attempting to collect a debt from you.

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 1875 Century Park East, Suite 1900, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): CHAPTER 11 TRUSTEE'S OPPOSITION TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (ACTION IN NON-BANKRUPTCY FORUM) 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*) January 10, 2024 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:

Megan M Adeyemo on behalf of Creditor Aya Healthcare, Inc.
madeyemo@grsm.com, asoto@grsm.com

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David E Ahdoot on behalf of Interested Party Courtesy NEF
dahdoot@bushgottlieb.com, kprestegard@bushgottlieb.com

Joseph M Ammar on behalf of Creditor Stryker Corporation
ammar@millercanfield.com

Scott E Blakeley on behalf of Creditor Baxter Healthcare Corporation
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Joseph P Buchman on behalf of Creditor Montebello Land and Water Company
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Adrian Butler on behalf of Interested Party Courtesy NEF
abutler@bushgottlieb.com

Augustus Curtis on behalf of Creditor United States of America, on behalf of HHS and CMS
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Howard M Ehrenberg (TR)
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Evan Gershbein on behalf of Other Professional Kurtzman Carson Consultants LLC
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Faisal Gill on behalf of Other Professional Cal-Med Health Center
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Steven T Gubner on behalf of Interested Party Courtesy NEF
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Melissa Hamill on behalf of Interested Party Attorney General For The State Of Ca
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Stella A Havkin on behalf of Creditor Lung Chung M.D.
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Robert M Hirsh on behalf of Interested Party Medline Industries, LP
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Mark S Horoupian on behalf of Interested Party Courtesy NEF
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Alexandria Lattner on behalf of Debtor Montebello Community Health Services, Inc.
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Kelly L Morrison on behalf of U.S. Trustee United States Trustee (LA)
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Howard Steinberg on behalf of Creditor U.S. Bank Trust Company National Association, as Master Trustee
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Jacob Unger on behalf of Creditor CASE MANAGEMENT INTEGRATED SOLUTIONS, LLC DBA HORIZON
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Kevin Walsh on behalf of Defendant U.S. Bank, National Association
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Sharon Z. Weiss on behalf of Interested Party Hilco Real Estate, LLC
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Roye Zur on behalf of Interested Party Courtesy NEF
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☐ 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.

☐ 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.

January 10, 2024

Denise Walker

/s/ Denise Walker

Date

Printed Name

Signature