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

11
12 In re:) Case No.: 2:18-bk-20151-ER
13 VERITY HEALTH SYSTEMS OF)
14 CALIFORNIA, INC., *et al.*) Honorable Ernest M. Robles
15 Debtors and Debtors In Possession.) **REPLY TO OPPOSITIONS TO MOTION**
16) **FOR RELIEF FROM THE AUTOMATIC**
17) **STAY**
18) Hearing:
19) Date: September 23, 2019
20) Time: 10:00 a.m.
21) Location: Courtroom 1568
22) 255 East Temple Street
23) Los Angeles, CA
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25)
26)
27)
28)



1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Movant Jason Michael Shank (“Movant”), by and through his attorneys of record, hereby
3 submits his Reply to Oppositions to Motion For Relief from the Automatic Stay (“Reply”).

4 On or about August 29, 2019, Mr. Shank filed its Motion for Relief from the Automatic Stay
5 (“Motion”) currently in place for In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*;
6 Bankruptcy Petition # 2:18-bk-20151-ER. On or about September 9, 2019, the Official Committee of
7 Unsecured Creditors of Verity Health Systems of California, Inc., *et al.* (the “Committee”) filed a
8 Response to the Motion. The Committee argues that relief from the stay would be premature and that it
9 is concerned that granting relief at this time could negatively impact the Debtor’s bankruptcy case. The
10 Committee goes on to state that to the extent that Movant seeks to recover from the Debtors and their
11 estates rather than only from the Debtors’ insurers, it believes that should weigh against granting relief.
12 On or about September 9, 2019, debtor and debtor in possession, Verity Health System of California,
13 Inc. (“VHS”) filed its Response to the Motion. In its response VHS states that it does not oppose relief
14 from the stay so long as Movant is only seeking compensation from insurance, and requests that if relief
15 is granted that the stay remain in effect until September 30, 2019. Due to the similarities expressed by
16 the responses of the Committee and VHS, Movant’s reply will address both, here.

17 In deciding whether to grant stay relief, courts will generally look to the factors presented in *In*
18 *re Curtis*, 40 B.R. 795, 806 (Bankr.D.Utah 1984). The *Curtis* court provided factors to consider when
19 deciding whether to grant stay relief which include, among others, “whether relief will result in partial or
20 complete resolution of issues,” “lack of any connection with or interference with the bankruptcy case,”
21 “whether debtor's insurance carrier has assumed full financial responsibility for defending the
22 litigation,” and the “impact of the stay on the parties and the ‘balance of hurt.’ ” See *Id.*

23 Additionally, Bankruptcy Code gives bankruptcy court a fairly broad discretion to provide
24 appropriate relief from an automatic stay as may fit the facts of the case. *In re Atlantic Ambulance*
25 *Associates, Inc.*, Bkrcty.E.D.Va.1994, 166 B.R. 613. The power to modify or vacate an automatic stay is
26 exercised by bankruptcy court according to the particular circumstances of eachcase and is to be guided
27 by considerations that under the law make for ascertainment of what is just to claimants, debtor and
28 estate. *In re Towner Petroleum Co.*, Bkrcty.Okl.1985, 48 B.R. 182.

1 Both the Committee and VHS reference Movant’s intent to preserve Movant’s rights to seek
2 recovery from the Debtors and the estate in the event the Debtor’s insurance does not provide coverage,
3 or declines to extend coverage for damages resulting from Mr. Shank’s wrongful termination claims. As
4 stated in the declaration in support of Movant’s Motion, Movant is informed and believes that Debtor’s
5 Employment Practices Liability Insurance (“EPLI”) policy is applicable to and covers Movant’s
6 potential wrongful termination claims against Debtor. As stated, should there be an insurance policy that
7 covers Movant’s potential wrongful termination claims against Debtor, and the carrier for that insurance
8 policy extends coverage, Movant would seek recovery from said policy. However, as of the date of this
9 filing, despite efforts made by Movant to ascertain whether the policy will extend to cover Movant’s
10 claims, the Debtor has not made its policy number or other policy identifying information known to
11 Movant. Without any indication as to whether the Debtor still has an EPLI policy in place, and whether
12 the policy is applicable to and covers Movant’s potential wrongful termination claims, remains to be
13 established. As such, it is necessary for Movant to preserve Movant’s rights to seek recovery from the
14 debtors and the estate in the event the Debtor’s insurance does not provide coverage for damages
15 resulting from Mr. Shank’s wrongful termination claims.

16 Although the Committee states that it believes granting relief at this time could negatively impact
17 the Debtor’s bankruptcy case—it fails to state exactly how granting relief could negatively impact the
18 case. However, it cannot be understated that denying relief undoubtedly will have a negative impact on
19 Movant. In their responses, the Committee and VHS do not take into account that denying Movant’s
20 request for relief from the stay would have the potential to gravely prejudice Movant. Any delay in
21 determining whether to grant relief has the potential to cause Movant to run afoul of certain statutory
22 obligations to which Movant must adhere including but not limited to the statute of limitations within
23 which Movant may bring his wrongful termination claims.

24 Further, in the case at hand, granting relief from the automatic stay would be just under the
25 current circumstances pursuant to the factors articulated in *Curtis*. Granting relief will result in partial or
26 complete resolution of issues as relief from the stay as it will allow Movant the opportunity to pursue his
27 potential wrongful termination claims which arise under non-bankruptcy law in the appropriate non-
28 bankruptcy forum. Movant’s claims are not related to/lack connection to the bankruptcy case, but are

1 instead specifically related to potential wrongful termination claims arising out of Movant's employment
2 relationship with Verity Health Systems of California, Inc. prior to the initiation of the current
3 bankruptcy case. Granting relief will also allow Movant to go forward with the filing of his wrongful
4 termination suit and will provide Movant with the mechanism to engage in discovery efforts which will
5 assist Movant in determining whether the Debtor's insurance carrier can and will assumed full financial
6 responsibility for defending the litigation as to Movant's wrongful termination claims. Granting relief
7 from the auto stay would be just under these circumstances.

8 It is not Movant's intent to frustrate the purpose of the current bankruptcy case. However, due to
9 the lack of cooperation and lack of necessary information from the Debtor, Movant's hands are tied as to
10 the options available to pursue a resolution of his wrongful termination claims. Therefore a lift of the
11 automatic stay is Movant's only recourse. Movant therefore requests that the Court grant Movant's
12 Motion requesting relief from the automatic stay

13
14 Dated: September 16, 2019

LEVIN & NALBANDYAN, LLP

15
16 By: /s/ Tanganica J. Turner
17 A. Jacob Nalbandyan, Esq.
18 Tanganica J. Turner, Esq.
19 Attorneys for Movant,
20 JASON MICHAEL SHANK
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
(CASE NO. 2:18-bk-20151-ER)

I am employed in the County of Los Angeles, State of California. I am over the age 18 and not a party to the within action. My business address is 811 Wilshire Boulevard, Suite 800, Los Angeles, CA 90017. On the date stated below, I served the foregoing document(s) described as **REPLY TO OPPOSITIONS TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY** on the interested parties in this action as stated below: **SEE ATTACHED SERVICE LIST.**

XXX BY MAIL. I am “readily familiar” with Levin & Nalbandyan, LLP’s practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices.

BY OVERNIGHT DELIVERY. I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or a driver authorized by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) being served.

XXX BY CM/ECF. I filed the above referenced document with the Clerk of the United States District Court of Central District of California, using the CM/ECF System. The Court’s CM/ECF System will send an e-mail notification of the foregoing to the following parties and counsel of record who are registered with the Court’s CM/ECF System.

BY FACSIMILE. I caused said document(s) to be transmitted by facsimile. The telephone number of the sending facsimile machine was (213) 232-4849. The facsimile machine I used complied with California Rules of Court 2.301(3). The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

BY PERSONAL SERVICE. By causing delivery of copy(ies) of the document(s) by hand to the person(s) listed in the service list or to _____, a representative of the law firm of such person(s). I am exempt from registration as a California process server under Bus. & Prof. Code §22350(b).

XXX FEDERAL. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on September 16, 2019 at Los Angeles, California.



Name: Tony Arias

Signature: _____

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