

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  Richard T. Baum SBN 80889 11500 West Olympic Boulevard, Suite 400 Los Angeles, California 90064 Telephone:(310) 277-2040 rickbaum@hotmail.com  Joel Glaser, Esq. SBN 194442 11500 West Olympic Boulevard, Suite 400 Los Angeles, California 90064 Telephone: (310) 943-8005 joel@glaserlaw.org  <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Mesha Sanford	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT                  CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</b>	
In re:  Verity Health System of California, Inc.          Debtor(s).	CASE NO.: 2:18-bk-20151-ER CHAPTER: 11  <div style="text-align: center; border: 1px solid black; padding: 5px;"> <b>NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (ACTION IN NONBANKRUPTCY FORUM)</b> </div> DATE: 02/24/2020 TIME: 10:00 am COURTROOM: 1568
<b>Movant:</b> Mesha Sanford	

**1. Hearing Location:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> 255 East Temple Street, Los Angeles, CA 90012 | <input type="checkbox"/> 411 West Fourth Street, Santa Ana, CA 92701 |
| <input type="checkbox"/> 21041 Burbank Boulevard, Woodland Hills, CA 91367        | <input type="checkbox"/> 1415 State Street, Santa Barbara, CA 93101  |
| <input type="checkbox"/> 3420 Twelfth Street, Riverside, CA 92501                 |  |

2. Notice is given to the Debtor and trustee (*if any*)(Responding Parties), their attorneys (*if any*), and other interested parties that on the date and time and in the courtroom stated above, Movant will request that this court enter an order granting relief from the automatic stay as to Debtor and Debtor’s bankruptcy estate on the grounds set forth in the attached Motion.
3. To file a response to the motion, you may obtain an approved court form at [www.cacb.uscourts.gov/forms](http://www.cacb.uscourts.gov/forms) for use in preparing your response (optional LBR form F 4001-1.RFS.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.



4. When serving a response to the motion, serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above.
5. If you fail to timely file and serve a written response to the motion, or fail to appear at the hearing, the court may deem such failure as consent to granting of the motion.
6.  This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1(d). If you wish to oppose this motion, you must file and serve a written response to this motion no later than 14 days before the hearing and appear at the hearing.
7.  This motion is being heard on SHORTENED NOTICE pursuant to LBR 9075-1(b). If you wish to oppose this motion, you must file and serve a response no later than (*date*) \_\_\_\_\_ and (*time*) \_\_\_\_\_; and, you may appear at the hearing.
  - a.  An application for order setting hearing on shortened notice was not required (according to the calendaring procedures of the assigned judge).
  - b.  An application for order setting hearing on shortened notice was filed and was granted by the court and such motion and order have been or are being served upon the Debtor and upon the trustee (if any).
  - c.  An application for order setting hearing on shortened notice was filed and remains pending. After the court rules on that application, you will be served with another notice or an order that specifies the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.

Date: 01/15/2020

Law Offices of Richard T. Baum  
Printed name of law firm (if applicable)

Richard T. Baum  
Printed name of individual Movant or attorney for Movant

/s/ Richard T. Baum  
Signature of individual Movant or attorney for Movant

## MOTION FOR RELIEF FROM THE AUTOMATIC STAY AS TO NONBANKRUPTCY ACTION

1. **In the Nonbankruptcy Action, Movant is:**

- a.  Plaintiff
- b.  Defendant
- c.  Other (*specify*):

2. **The Nonbankruptcy Action:** There is a pending lawsuit or administrative proceeding (Nonbankruptcy Action) involving the Debtor or the Debtor's bankruptcy estate:

- a. *Name of Nonbankruptcy Action:* Mesha Sanford v Verity Health System of California, Inc.
- b. *Docket number:* 19STCV33618
- c. *Nonbankruptcy forum where Nonbankruptcy Action is pending:*  
Los Angeles Superior Court
- d. *Causes of action or claims for relief (Claims):*  
Harassment, Discrimination, Retaliation in Violation of FEHA, Violations of California Labor Code, Wrongful Termination

3. **Bankruptcy Case History:**

- a.  A voluntary  An involuntary petition under chapter  7  11  12  13 was filed on (*date*) 08/31/2018.
- b.  An order to convert this case to chapter  7  11  12  13 was entered on (*date*) \_\_\_\_\_.
- c.  A plan was confirmed on (*date*) \_\_\_\_\_.

4. **Grounds for Relief from Stay:** Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant relief from stay to proceed with the Nonbankruptcy Action to final judgment in the nonbankruptcy forum for the following reasons:

- a.  Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate.
- b.  Movant seeks recovery primarily from third parties and agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- c.  Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- d.  The Claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum.
- e.  The Claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum.

- f.  The bankruptcy case was filed in bad faith.
- (1)  Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.
- (2)  The timing of the filing of the bankruptcy petition indicates that it was intended to delay or interfere with the Nonbankruptcy Action.
- (3)  Multiple bankruptcy cases affect the Nonbankruptcy Action.
- (4)  The Debtor filed only a few case commencement documents. No schedules or statement of financial affairs (or chapter 13 plan, if appropriate) has been filed.
- g.  Other (*specify*):

5. **Grounds for Annulment of Stay.** Movant took postpetition actions against the Debtor.

- a.  The actions were taken before Movant knew that the bankruptcy case had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.
- b.  Although Movant knew the bankruptcy case was filed, Movant previously obtained relief from stay to proceed in the Nonbankruptcy Action in prior bankruptcy cases affecting the Nonbankruptcy Action as set forth in Exhibit. \_\_\_\_\_.
- c.  Other (*specify*):

6. **Evidence in Support of Motion: (*Important Note: declaration(s) in support of the Motion MUST be signed under penalty of perjury and attached to this motion.*)**

- a.  The DECLARATION RE ACTION IN NONBANKRUPTCY FORUM on page 6.
- b.  Supplemental declaration(s).
- c.  The statements made by Debtor under penalty of perjury concerning Movant's claims as set forth in Debtor's case commencement documents. Authenticated copies of the relevant portions of the Debtor's case commencement documents are attached as Exhibit. \_\_\_\_\_.
- d.  Other evidence (*specify*):  
Declaration of Mesha Sanford

7.  **An optional Memorandum of Points and Authorities is attached to this Motion.**

**Movant requests the following relief:**

1. Relief from the stay pursuant to 11 U.S.C. § 362(d)(1).
2.  Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate.
3.  The stay is annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant in the Nonbankruptcy Action shall not constitute a violation of the stay.

4.  The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified, or annulled as to the co-debtor, on the same terms and condition as to the Debtor.
5.  The 14-day stay prescribed by FRBP 4001(a)(3) is waived.
6.  The order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Nonbankruptcy Action.
7.  The order is binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice
8.  Other relief requested.

Date: 01/15/2020

Law Offices of Richard T. Baum

Printed name of law firm (*if applicable*)

Richard T. Baum

Printed name of individual Movant or attorney for Movant

/s/ Richard T. Baum

Signature of individual Movant or attorney for Movant

## DECLARATION RE ACTION IN NONBANKRUPTCY FORUM

I, (*name of Declarant*) JOEL GLASER, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding (Nonbankruptcy Action) because:

- I am the Movant.
- I am Movant's attorney of record in the Nonbankruptcy Action.
- I am employed by Movant as (*title and capacity*):
- Other (*specify*):

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to the Nonbankruptcy Action. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

3. In the Nonbankruptcy Action, Movant is:

- Plaintiff
- Defendant
- Other (*specify*):

4. The Nonbankruptcy Action is pending as:

- a. *Name of Nonbankruptcy Action*: Mesha Sanford v Verity Health System of California, Inc.
- b. *Docket number*: 19STCV33618
- c. *Nonbankruptcy court or agency where Nonbankruptcy Action is pending*:  
Los Angeles Superior Court

5. **Procedural Status of Nonbankruptcy Action:**

a. The Claims are:  
Harassment, Discrimination, Retaliation in Violation of FEHA, Violations of the California Labor Code, Wrongful Termination

b. True and correct copies of the documents filed in the Nonbankruptcy Action are attached as Exhibit 1.

c. The Nonbankruptcy Action was filed on (*date*) 09/20/2019.

d. Trial or hearing began/is scheduled to begin on (*date*) \_\_\_\_\_.

e. The trial or hearing is estimated to require \_\_\_\_\_ days (*specify*).

f. Other plaintiffs in the Nonbankruptcy Action are (*specify*):

g. Other defendants in the Nonbankruptcy Action are (*specify*):

Michael Schweitzer

6. **Grounds for relief from stay:**

- a.  Movant seeks recovery primarily from third parties and agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or the Debtor's bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- b.  Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or the Debtor's bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- c.  Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate. The insurance carrier and policy number are (*specify*):

d.  The Nonbankruptcy Action can be tried more expeditiously in the nonbankruptcy forum.

(1)  It is currently set for trial on (*date*) \_\_\_\_\_.

(2)  It is in advanced stages of discovery and Movant believes that it will be set for trial by (*date*) \_\_\_\_\_. The basis for this belief is (*specify*):

(3)  The Nonbankruptcy Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources.

e.  The bankruptcy case was filed in bad faith specifically to delay or interfere with the prosecution of the Nonbankruptcy Action.

(1)  Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.

(2)  The timing of the filing of the bankruptcy petition indicates it was intended to delay or interfere with the Nonbankruptcy Action based upon the following facts (*specify*):

(3)  Multiple bankruptcy cases affecting the Property include:

(A) Case name:

Case number:

Chapter:

Date filed:

Date discharged:

Date dismissed:

Relief from stay regarding this Nonbankruptcy Action  was  was not granted.

(B) Case name:  
Case number: Chapter:  
Date filed: Date discharged: Date dismissed:  
Relief from stay regarding this Nonbankruptcy Action  was  was not granted.

(C) Case name:  
Case number: Chapter:  
Date filed: Date discharged: Date dismissed:  
Relief from stay regarding this Nonbankruptcy Action  was  was not granted.

See attached continuation page for information about other bankruptcy cases affecting the Nonbankruptcy Action.

See attached continuation page for additional facts establishing that this case was filed in bad faith.

f.  See attached continuation page for other facts justifying relief from stay.

7.  Actions taken in the Nonbankruptcy Action after the bankruptcy petition was filed are specified in the attached supplemental declaration(s).
- a.  These actions were taken before Movant knew the bankruptcy petition had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.
- b.  Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with the Nonbankruptcy Action enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit \_\_\_\_\_
- c.  For other facts justifying annulment, see attached continuation page.

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

01/16/2020  
Date

JOEL GLASER  
Printed name

/s/ Joel Glaser  
Signature

## 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:  
11500 West Olympic Boulevard, Suite 400  
Los Angeles, California 90064

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (ACTION IN NONBANKRUPTCY 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) 01/15/2020, 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) 01/16/2020, 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.

01/16/2020

Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

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

In re: Verity Health System of California, Inc.                      Case No. 2:18-bk-20151-ER  
Chapter 11

Debtor.

**MOTION FOR RELIEF FROM AUTOMATIC STAY TO ALLOW**  
**CREDITOR MESHA SANFORD TO PROCEED WITH STATE COURT**  
**CLAIMS FOR UNLAWFUL EMPLOYMENT PRACTICES**

**I.**

**INTRODUCTION**

Pursuant to Section 362(d) of the Bankruptcy Code, and Rule 4001 of the Federal Rules of Bankruptcy Procedure, Mesha Sanford (“Movant” or “Sanford”), hereby moves the Court for an entry of an order terminating and providing relief from the automatic stay imposed under Section 362(a) of the Bankruptcy Code, to allow Movant to pursue certain state court litigation on employment related causes of action that arose prior to the Petition Date. Specifically, Movant wishes to pursue her complaint for violations of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) and other unlawful employment practices, versus the Debtor. Movant is not seeking to recover anything directly from the Debtor or the bankruptcy estates, but instead will rely entirely on the proceeds from the Debtor’s applicable Employment Practices Liability insurance policy (or policies) to satisfy any judgment obtained against them. In support of her Motion, the Movant respectfully states as follows:

**II. JURISDICTION**

1. Pursuant to 28 U.S.C. §§ 157 and 1334, this Court has jurisdiction over this matter, which is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

### III.

#### **BRIEF FACTUAL BACKGROUND**

2. Verity Health Systems of California, Inc. is a California corporation.
3. At time of filing the state Court complaint which Movant seeks leave to pursue, Movant's counsel was unaware of the bankruptcy.
4. Movant's counsel received notice of the debtors Petition on October 3, 2019. At that point, Movant's counsel ceased work on the state court case and subsequently prepared this motion.

### IV.

#### **THE PARTIES**

5. Sanford is a former employee of the Debtor. On May 23, 2019, Sanford filed a complaint of Harassment, Discrimination and Retaliation in violation of California's Fair Employment and Housing Act ("FEHA"; California Government Code § 12940 et seq.) with California Department of Fair Employment & Housing (the "DFEH Complaint"). The DFEH then issued a Notice of Case Closure and Right to Sue, leaving Sanford free to pursue her claims in the Superior Court of the State of California (the "State Court Litigation.")
6. The Debtor has been named as a defendant in the State Court Litigation.

### V.

#### **THE STATE COURT CLAIMS**

7. The Movant initiated her claim against the Debtor on May 23, 2019, by filing her DFEH Complaint on May 23, 2019. Under California law, Government Code section 12965, subdivision (b), Sanford has one year from the date of receiving

her “right to sue” notice from the DFEH to file a lawsuit in in the Superior Court of the State of California.

8. In her DFEH Complaint, Sanford asserted the following claims against the Debtors: Harassment, Discrimination and Retaliation due to her Race and Medical Condition and Failure to Investigate Discrimination and Retaliation due to her Race and Medical Condition. Sanford alleged that management personnel and others retaliated against her for reporting Harassment and Discrimination based on her race, African American, and her medical condition, stress and anxiety. This retaliation created a hostile working environment. When Sanford continued to complain about Harassment and Discrimination she was terminated.

9. Movant is informed and believes the Debtor maintains applicable Employment Practices Liability (“EPL”) insurance coverage which appears to have been in effect on the date when Movant was harassed, discriminated against and terminated, and when she filed her DFEH claim. Movant is informed and believes this coverage does not appear to contain self-insured retention.

10. Movant wishes to pursue her litigation in the Superior Court of the State of California before the assets of the Debtor are liquidated, the company is dissolved and/or sold to a third party and contact with various management personnel and witnesses is lost and/or documentation relevant to Movant’s claims is lost or placed out of her reach.

11. Movant is informed and believes that the stay imposed herein will help ensure that Movant has access to documents and records of the Debtor in the event the Debtor is liquidated, dissolved and/or sold.

## VI.

### LEGAL ARGUMENT

Section 362(d)(1) of the Bankruptcy Code provides in relevant part: “On request of a third party in interest, and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by

terminating, annulling, modifying, or conditioning such stay – (1) for cause[.]” 11 U.S.C. § 362(d)(1).

To obtain relief from the automatic stay, the movant must first establish a prima facie case that “cause” exists for the relief under Section 362(d)(1). See In re Duvar Apt., Inc., 205 B.R. 196, 200 (9th Cir. BAP 1996). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. See 11 U.S.C. § 362(g)(2); In re Sonnax Indus., Inc., 907 F.2d 1280, 1285 (2d Cir. 1990).

Bankruptcy courts are expressly denied jurisdiction to try personal injury actions. Although pretrial proceedings may be held in bankruptcy court, the actual trial of a personal injury action must be conducted in the district court or state court. [28 USC § 157(b)(5); see also 28 USC § 157(b)(2)(B) & (O)] Sanford’s discrimination, retaliation and employment related claims are personal injury claims in that the claims involve injury to the Plaintiff’s rights and interests and damages which are typically covered by an employer’s EPL insurance policy.

Bankruptcy courts generally lift the stay to allow personal injury actions to proceed in state court where the debtor has liability coverage for both defense costs and any resulting judgment. Matter of Holtkamp (7th Cir. 1982) 669 F2d 505, 508-509]

EPL insurance generally covers retaliation claims made against the insured by a person asserting a claim under California’s Fair Employment and Housing Act (“FEHA”)

In In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990), the Ninth Circuit held that the bankruptcy court had abused its discretion by not abstaining and entirely lifting the stay to enable litigation to proceed. 912 F.2d 1162. In doing so, the Court found the following factors to all support abstention: (1) resolution of claims in state court would favorably affect the efficient administration of the estate; (2) state law issues predominated over bankruptcy

issues; (3) the existence of prior litigation of those issues which had already begun in state court; (4) the lack of federal jurisdiction basis other than bankruptcy jurisdiction for the state claims; (5) the case was a related rather than core proceeding; (6) the ease of permitting completion of the state court litigation while reserving the judgment's enforcement to the bankruptcy court; and (6) the right to a jury trial in state court. Id. at 1169.

Finally, courts have further held that cause exists to lift the stay, and that “debtors-defendants will suffer little prejudice when they are sued by plaintiffs who seek nothing more than declarations of liability that can serve as a predicate for a recovery against insurers, sureties, or guarantors.” In re Fernstrom Storage and Van Co., 938 F.2d 731 (7th Cir. 1991); see also In re Borbridge, 81 B.R. 332 (E.D. Pa. 1988) (noting that “[t]he easiest ground for determining that ‘cause’ exists in favor of an unsecured creditor is when the creditor seeks to recover from nonstate property, such as an insurance or indemnity agreement”).

**A. MOVANT’S CLAIMS ARE “PERSONAL INJURY CLAIMS” WHICH SHOULD BE LITIGATED IN STATE COURT**

The Bankruptcy Court’s ability to adjudicate personal injury tort claims is limited by 28 U.S.C. § 157. Section 157(b)(2)(B) excludes from the list of “core” matters the “liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11.” Section 157(b)(2)(O) also excludes “personal injury tort or wrongful death claims” from “other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship.”

The term “personal injury tort” is not defined in either title 28 or title 11 and there is considerable disagreement among the courts on its definition. Some courts adopt a “narrow” definition and hold that a tort without trauma or bodily injury is not a “personal injury tort” claim. See, e.g., In re Atron Inc. of Michigan, 172 B.R.

541, 542-543 (Bankr. W.D. Mich. 1994). Other courts adopt a “broader” view that includes a claim arising from an invasion of personal rights as a “personal injury tort” claim. See, e.g., Leathem v. von Volkmar (In re von Volkmar), 217 B.R. 561, 566-567 (Bankr. N.D. Ill. 1998). A third approach adopts the broader definition of “personal injury tort,” but requires further scrutiny of the claim to determine whether it has “earmarks of a financial, business, or property tort claim, or a contract claim.” See Stranz v. Ice Cream Liquidation, Inc. (In re Ice Cream Liquidation, Inc.), 281 B.R. 154, 161 (Bankr. D. Conn. 2002). The third interpretation, requiring a case-by-case analysis, is the better approach.

Similar to the unlawful employment practice claims alleged in Movant’s DFEH complaint, the claims at issue in Stranz were employment based sexual harassment claims brought by employees of the debtor’s predecessor pursuant to 42 U.S.C. § 2000e and its state law counterpart. After a discussion of the various approaches to define a “personal injury tort” claim, the Stranz court concluded that the creditors’ sexual harassment claims qualified as “personal injury tort” claims within the meaning of § 157. Stranz, 281 B.R. 162-163. The Stranz court refused to adopt a bright line approach, but recognized that determining what qualifies as a “personal injury tort” case within the meaning of § 157 requires a case-by-case analysis. The Stranz court focused its inquiry on the gravamen of the creditors’ complaint to determine whether the claims were truly economic in nature and concluded that allegations of intentional and reckless indifference and disregard in committing an unlawful employment practice is different from other workplace claims which might constitute financial, business, or property tort claims of which a bankruptcy court is familiar. The court explained:

That the Sexual Harassment Successor Liability Claim arises in an employment context gives the court some pause because the employment relationship is a contractual (and, hence, economic) one. However, Plaintiffs Stranz and Kemp allege that “Dunkirk has intentionally and with reckless

indifference and disregard committed an unlawful employment practice in violation of Section 703 of Title VII, 42 U.S.C. Sec. 2000e-2.” (See Complaint, Counts I, III, V, XV, and XVIII). That allegation (if proved) qualifies Plaintiffs Stranz and Kemp (if they otherwise prevail) not only for equitable relief (see 42 U.S.C. § 2000e-5(g)) but for damages as well (see 42 U.S.C. § 1981a). That fact sufficiently distinguishes Plaintiffs Stranz’s and Kemp’s portion of the Sexual Harassment Successor Liability Claim from other workplace claims which might constitute financial, business or property tort claims (or even contract claims) rather than “personal injury tort claims.” Id. at 162-163.

That same distinguishing factor is found here, where the gravamen of Movant’s complaint is the Defendants’ intentional harassment, discrimination and retaliation. These allegations entitle Movant not only to equitable relief under California's FEHA but to damages as well. (See, California Government Code §§ 12970(a)) This is not just an allegation of breach of an employment contract or failure to pay overtime wages. It is a case that stems from alleged conduct that violates the rights of the Movant. As the court in Stranz recognized, a claim arising out of an employment relationship may be “contractual (and hence, economic)” but allegations of sexual harassment are anything but economic.<sup>1</sup> Id.

Allegations of Disability Discrimination, Harassment, Retaliation and Wrongful termination, and Retaliation/Discrimination based upon a Medical Condition are based on a violation of a person’s personal right to equal protection. This is not the typical breach of contract or fraud claim of which bankruptcy courts are familiar and more akin to intentional tort claims. Interpreting “personal injury tort” claims to include Movant’s FEHA claims is also consistent with the United States Supreme Court’s treatment of similar civil rights claims in Wilson v. Garcia,

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<sup>1</sup> One court has explained that personal injury tort victims “stand in a somewhat different relationship with the bankruptcy debtor because they did not voluntarily enter into dealings with the debtor (and accept the risk of loss) in the same sense as traditional bankruptcy claimants.” *Adams v. Cumberland Farms, Inc.*, No. 95-1736, 1996 WL 228567, \*3 (1st Cir. May 7, 1996). Harassment and discrimination is not part of a choice to accept employment or the balancing of the risk of loss in making that choice.

471 U.S. 261 (1985). See, e.g., Thomas v. Adams (In re Gary Brew Enterprises, Ltd.), 198 B.R. 616, 620 (Bankr. S.D. Cal. 1996). In Wilson, the United States Supreme Court discussed the nature of civil rights actions brought pursuant to 42 U.S.C. § 1983 and treated such actions as tort actions: Among the potential analogies, Congress unquestionably would have considered the remedies established in the Civil Rights Act to be more analogous to tort claims for personal injury than, for example, to claims for damages to property or breach of contract. The Constitution’s command is that all “persons” shall be accorded the full privileges of citizenship, no person shall be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws. A violation of that command is an injury to the individual rights of the person. Wilson v. Garcia, 471 U.S. 261, 276-278 (1985). The Supreme Court has also treated § 1981 claims the same way. Goodman v. Lukens Steel Co., 482 U.S. 656, 661-662 (1987).

California’s prohibition on disability discrimination under FEHA supports a common law tort action for termination in violation of “fundamental” public policy. [Angell v. Peterson Tractor, Inc. (1994) 21 CA4th 981, 987, 26 CR2d 541, 544-545 (disapproved on other grounds in City of Moorpark v. Sup.Ct. (Dillon) (1998) 18 C4th 1143, 77 CR2d 445)—plaintiff allegedly terminated because of heart condition] Movant’s civil rights claims are not so different from the § 1983 claims at issue in Wilson. Both statutes protect an individual’s civil rights. Just because a person’s civil rights are allegedly violated in an employment context does not change the nature of the claim. To interpret civil rights claims as “personal injury tort” claims is also consistent with the generally accepted definition of a “personal injury.” Black’s Law Dictionary defines “personal injury” as not only “bodily injury” but also “any invasion of a personal right, including mental suffering and false imprisonment.” BLACK’S LAW DICTIONARY (9th. Ed. 2009). The Restatement (Second) of Torts recognizes false imprisonment,

defamation, and malicious prosecution as torts although they do not necessarily result in bodily injuries. The Restatement also recognizes tort liability for violations of legislative provisions such as those alleged by the Movant.

RESTATEMENT (SECOND) OF TORTS § 874A cmt. b. (1979) (“Examples of legislative provisions creating new tort rights are civil rights acts...”). Further, the Bankruptcy Court cannot ignore the language used by the Bankruptcy Code discussing exemptions. Congress specifically granted an exemption to a debtor’s right to receive “payment” or “property traceable to” payment on account of “personal bodily injury” pursuant to 11 U.S.C. § 522(d)(11)(D). Congress did not make the same distinction in 28 U.S.C. § 157. Finally, California's FEHA provides broader protections against discrimination than Title VII. See, California Government Code §§ 12926(d), 12940(j)(4)(A)

Therefore, for all the reasons stated herein, the term “personal injury tort” as used in § 157(b) includes the harassment, discrimination, retaliation, wrongful termination and other claims sought to be litigated by the Movant pursuant to California’s Fair Employment and housing Act.

**B. THE TWELVE FACTORS FOR LIFTING A STAY**

Courts have identified twelve nonexclusive factors a bankruptcy court should weigh in determining whether the stay should be lifted to allow a creditor to continue pending litigation in a non-bankruptcy forum. Those twelve factors are:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of connection or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. 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;

5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
12. The impact of the stay on the parties and the "balance of hurt."

In re Sonnax Indus., Inc., 907 F.2d at 1285.

All twelve factors are not relevant or applicable in every case. Id. at 1286. Nor is a court required to give each factor equal weight when making its determination. In re Burger Boys, Inc., 183 B.R. 682, 688 (S.D.N.Y. 1994).

**C. APPLICATION OF THE TWELVE FACTORS  
DEMONSTRATES THE STAY SHOULD BE LIFTED**

As an initial matter, the third, fourth, sixth, eighth, and ninth factors do not apply here. The remaining factors weigh heavily in favor of granting Movant relief from the stay.

Under the first factor, allowing the Movant to proceed with the State Court Litigation will likely result in a complete resolution of the issues with regard to Movant's claims and status as a creditor. Movant's creditor status derives from her wrongful employment practices claims in the State Court Litigation; once that

lawsuit is resolved the only issue will be collection from insurance proceeds.

There is a very high probability that the Movant will collect from insurance proceeds only, and any further action against the Debtor or Debtor's estate would be unnecessary.

Under the second factor, it does not appear that the State Court Litigation would interfere with or prolong the Debtor's chapter 11 case. The State Court Litigation involves wrongful employment practices claims stemming from the Debtor's violation of state statutes and common law.

The fifth factor is particularly relevant because the Movant is seeking to recover insurance proceeds. It is likely the Debtor's insurance carrier will assume financial responsibility for defending the State Court Litigation. The Debtor's estate would incur little or no expense to proceed with the State Court Litigation.

The seventh factor is also favorable to lifting the stay because doing so would not prejudice the interests of other creditors or interested parties. Allowing the State Court Litigation to move forward to its conclusion will likely resolve Movant's claim to the Debtor's estate, either by settlement or by reducing said claims to judgment, possibly eliminating the need to enforce the claims in bankruptcy if the insurance carrier pays the claims. Granting the motion to lift the stay will not prejudice the interests of other creditors because Movant will collect any judgment against the Debtors solely from the applicable insurance proceeds. Thus, the other creditors in the bankruptcy will not be harmed by granting the motion because Movant will not, and cannot, be able to enforce any judgment directly against the Debtors or their estates. *See* R.J. Groover Construction, 411 B.R. at 465; *In re Loudon*, 284 B.R. 106, 108 (8th Cir. B.A.P. 2002); *In re G.S. Distribution. Inc.*, 331 B.R. 552, 567-68 (Bankr. S.D.N.Y. 2005)(finding no prejudice to creditors from lifting stay because movant would not be able to enforce judgment without permission of bankruptcy court) Continuing the automatic stay, however, will result in a duplication of effort and a waste of judicial resources as Movant's claims

would have to be adjudicated to a final resolution and liquidated in bankruptcy court.

Under the tenth and eleventh factors, Movant has filed her DFEH complaint in May 2019, and has been issued a right to sue letter. The State Court Litigation was filed on September 20, 2019, in order to preserve Movant's claims. At time of filing the state Court complaint which Movant seeks leave to pursue, Movant's counsel, Mr. Glaser, was unaware of the bankruptcy. Movant's counsel received notice of the debtors Petition on October 3, 2019. At that point, Movant's counsel ceased work on the state court case.

As Movant's attorney, Mr. Glaser had commitments in other cases pending in Northern California and elsewhere, Mr. Glaser subsequently prepared this motion this petition which was filed at the earliest opportunity.

Under the twelfth factor, the "balance of hurt" weighs heavily in favor of lifting the stay for Movant. Lifting the stay would do little to no harm to the Debtor to as it appears likely its insurance carrier would defend the litigation and cover any monetary damages that may flow therefrom. Continuing the stay would force the parties to relitigate state court issues and claims in a bankruptcy tribunal, and would drastically increase expenses for all parties involved.

The above-captioned bankruptcy case will likely involve dozens if not hundreds of creditors; Movant would be substantially prejudiced if she was forced to litigate her California statutory employment claims in bankruptcy court, which would likely have little knowledge and experience in litigation of wrongful employment practices claims under California's Fair Employment and Housing laws.

Based on the factors noted above, Movant has established sufficient cause for relief from the stay. Failure to lift the stay in this case would result in a

horrific and undue burden on Movant, and would be an inefficient use of judicial resources.

**D. MOVANT’S REQUESTS FOR WAIVER OF FOURTEEN-DAY STAY PERIOD**

Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure provides: “An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 4001(a)(3). The Movant requests that any order granting the Movant relief from the automatic stay be effective immediately and that the 14-day stay period under Rule 4001(a)(3) be waived, so that the Movant may pursue the State Court Litigation immediately.

**VII.**

**CONCLUSION**

For the foregoing reasons, the Movant respectfully requests entry of an order granting this Motion, providing the Movant relief from the automatic stay to pursue the State Court Litigation, and to obtain such other and further relief as may be just and proper to allow the Movant to pursue her personal injury claims against the Debtor’s insurance proceeds.

DATED this 17th day of January 2020

Law Office of Richard T. Baum

/s/ Richard T. Baum, Esq.

**DECLARATION OF JOEL GLASER**

I, Joel Glaser, declare:

1. I am an attorney licensed in all the Courts of this state and I am counsel for Movant Mesha Sanford. The facts recited herein are within my personal knowledge or if stated on information and belief I believe them to be true.

2. I file this declaration in support of Mesha Sanford's motion for relief from stay in the above referenced matters. In order to pursue a civil action against the Debtor Mesha Sanford is moving this court for an order for relief from the stay imposed in this Chapter 11 bankruptcy case.

3. I am informed and believe Mesha Sanford was employed by Verity Health System of California, Inc. from March 5, 2018 until April 16, 2019, when she was terminated. During Mesha Sanford's employment she was Assistant Director, Managed Care – Risk Programs.

4. I am informed and believe during Mesha Sanford's employment, she made a formal complaint to Verity's Human Resources regarding harassment by her supervisor Michael Schweitzer, including Mr. Schweitzer calling her obsessively, not allowing her to take a break, lunch or go to the bathroom without accounting to him for her absence, and his hostility toward Mesha Sanford, including yelling, and accusing her of not completing work that had already been completed.

5. I am informed and believe Mesha Sanford's harassment complaint was inadequately investigated, and no remedial action was taken. In retaliation for her complaint of harassment, Mr. Schweitzer reduced her job duties, excluded her from meetings, delegated work directly to her subordinate, allowed her subordinate to cease communicating with her, did not allow her to discipline her subordinate, demoted her to the job of an analyst, and did not allow her to communicate with vendors.

6. I am informed and believe Mesha Sanford continued to complain about the harassment and retaliation in 2019 and was further retaliated against by being asked to train her replacement. Mesha Sanford was subsequently selected for lay off based on her race, medical condition and my complaints of harassment and retaliation. I am informed and believe that Verity replaced Mesha Sanford with a consultant who is Caucasian and does not suffer from stress and anxiety.

7. Based upon the foregoing, on or about May 23, 2019, I filed a complaint on behalf of Mesha Sanford with the California Department of Fair Employment and Housing (“DFEH”) DFEH Matter Number: 201905-06246823. A true and correct copy of the DFEH complaint is attached hereto as Exhibit “A.”

8. At the time of filing the DFEH complaint I requested that the DFEH not investigate the matter and issue an immediate Notice of Case Closure and issue a “Right to Sue letter” which entitles Mesha Sanford to pursue a civil action against the Debtor.

9. I filed the complaint in the State Court Litigation on behalf of Mesha Sanford on September 20, 2019, in order to preserve Movant’s claims. At time of filing the State Court complaint which Movant seeks leave to pursue, I was unaware of the debtor’s bankruptcy. I received notice of the debtors Petition on October 3, 2019. At that point, I ceased work on the state court case.

10. As I had commitments in other cases pending in Northern California and elsewhere, I subsequently prepared this petition which was filed at the earliest opportunity.

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

Executed this 16th day of January 2020 at Los Angeles, California

/s/ Joel Glaser, Esq.

# EXHIBIT A



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711  
<http://www.dfeh.ca.gov> | Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

May 23, 2019

RE: **Notice of Filing of Discrimination Complaint**  
DFEH Matter Number: 201905-06246823  
Right to Sue: Sanford / Verity Health System of California, Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711  
<http://www.dfeh.ca.gov> | Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

May 23, 2019

Mesha Sanford  
c/o Joel Glaser APC, 11300 W. Olympic Blvd., Suite 910 Suite 910  
Los Angeles, California 90064

RE: **Notice of Case Closure and Right to Sue**  
DFEH Matter Number: 201905-06246823  
Right to Sue: Sanford / Verity Health System of California, Inc. et al.

Dear Mesha Sanford,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 23, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing



1 **Complainant experienced retaliation** because complainant reported or resisted  
2 any form of discrimination or harassment, requested or used a disability-related  
3 accommodation and as a result was terminated, demoted, denied a work  
4 environment free of discrimination and/or retaliation, denied reasonable  
5 accommodation for a disability.

6 **Additional Complaint Details:** Mesha Sanford was employed at Verity Health  
7 System of California, Inc. (Verity) from March 5, 2018 to April 2019 as the Assistant  
8 Director of Managed Care/Risk Programs. During her employment, Ms. Sanford  
9 was discriminated, harassed and retaliated against based on her race, African  
10 American, and her medical condition, stress and anxiety.

11 On August 17, 2018, Ms. Sanford made a formal complaint to Verity's Human  
12 Resources regarding harassment by her supervisor Michael Schweitzer, including  
13 Mr. Schweitzer calling her obsessively, not allowing her to take a break, lunch or go  
14 to the bathroom without accounting to him for her absence, his hostility toward her,  
15 including yelling, and accusing her of not completing work that had already been  
16 completed.

17 Ms. Sanford's harassment complaint was inadequately investigated, and no  
18 remedial action was taken.

19 In retaliation for Ms. Sanford's complaint of harassment, Mr. Schweitzer reduced her  
20 job duties, excluded her from meetings, delegated work directly to her subordinate,  
21 allowed her subordinate to cease communicating with her, did not allow her to  
22 discipline her subordinate, demoted her to the job of an analyst, and did not allow  
23 her to communicate with vendors.

24 Ms. Sanford continued to complain about the harassment and retaliation in 2019 and  
25 was further retaliated against by being asked to train her replacement. Ms. Sanford  
26 was subsequently selected for lay off based on her race, medical condition and her  
27 complaints of harassment and retaliation. Ms. Sanford is informed that Verity  
28 replaced her with a consultant who is Caucasian and does not suffer from stress and  
anxiety.

1 VERIFICATION

2 I, **Joel Glaser**, am the **Attorney** in the above-entitled complaint. I have read the  
3 foregoing complaint and know the contents thereof. The matters alleged are based  
4 on information and belief, which I believe to be true.

5 On May 23, 2019, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

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**Los Angeles, CA**

**In re VERITY HEALTH SYSTEMS OF CALIFORNIA, INC.**

*2:18-bk-20151 ER*

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