NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re: VALLEY HEALTH SYSTEM, Debtor.	Case No. 6:07-bk-18293-PC Chapter 9 Adversary No. 6:12-ap-01032-PC Adversary No. 6:14-ap-01236-PC (Consolidated Under Adversary No. 6:12-ap-01032-PC)
JAN REICHARDT, et al., Plaintiffs, v. VALLEY HEALTH SYSTEM, a California Local Health Care District, Retirement Plan, et al., Defendants.	**MEMORANDUM RE: PETITIONERS' MOTION FOR REMAND TO STATE COURT, OR IN THE ALTERNATIVE, FOR ABSTENTION**
JAN REICHARDT, et al., Plaintiffs, v. THE VALLEY HEALTH SYSTEM RETIREMENT PLAN, et al., Defendants.	Date: April 12, 2018 Time: 10:00 a.m. Place: United States Bankruptcy Court Courtroom # 202 1415 State Street Santa Barbara, CA 93101

Plaintiffs, Jan Reichardt, Rosie De La Rosa, and Aileen Grisham (collectively, "Reichardt") seek an order remanding the above referenced adversary proceeding to the Superior Court of California, County of Riverside, pursuant to 28 U.S.C. § 1452(b) and FRBP 9027(d) or, in the alternative, abstention under either 28 U.S.C. § 1334(c)(1) or 28 U.S.C. § 1334(c)(2).[1] Defendants, Valley Health System ("VHS") and Metropolitan Life Insurance Company ("MetLife") oppose the motion. Having considered the pleadings, evidentiary record, and argument of counsel, the court will deny Reichardt's motion based upon the following findings of fact and conclusions of law made pursuant to F.R.Civ.P. 52(a)(1), as incorporated into FRBP 7052 and applied to adversary proceedings in bankruptcy cases.

I. STATEMENT OF FACTS

VHS is a local healthcare district formed in 1946 pursuant to the State of California Local Health Care District Law, Cal. Health & Safety Code § 32000, et seq. Prime Healthcare Mgm't, Inc. v. Valley Health Sys. (In re Valley Health Sys.), 429 B.R. 692, 700 (Bankr. C.D. Cal. 2010). On December 13, 2007, VHS filed a voluntary petition under chapter 9 of the Bankruptcy Code. Id. at 702. On the petition date, VHS owned and operated a skilled nursing facility, together with three hospitals that provided comprehensive health care services and 24-hour emergency medical services to residents in Riverside County, California. Id. at 700.

After determining that VHS was eligible for relief under chapter 9, the court entered an order for relief in the case on February 20, 2008. See In re Valley Health Sys., 383 B.R. 156, 165 (Bankr. C.D. Cal. 2008). Three years later, the court confirmed the First Amended Plan for the Adjustment of Debts of Valley Health System Dated December 17, 2009 (as modified) (the "Chapter 9 Plan") by order entered on April 26, 2010.[2] On October 14, 2010, VHS notified

[1] Unless otherwise indicated, all "Code," "chapter" and "section" references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330. "Rule" references are to the Federal Rules of Bankruptcy Procedure ("FRBP"), which make applicable certain Federal Rules of Civil Procedure ("F.R.Civ.P."). "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California ("LBR").

[2] Order (i) Confirming First Amended Plan for Adjustment of Debts of Valley Health System Dated December 17, 2009, as Modified February 19, 2010, and (ii) Granting Judgment for

creditors and parties in interest of the Chapter 9 Plan's Effective Date – October 13, 2010. VHS's Chapter 9 Plan and Confirmation Order provide for the discharge of VHS's prepetition debts and enjoin claimants from pursuing any action or proceeding on account of such debts.[3] "

On the petition date, VHS had a retirement plan for its employees (the "VHS Retirement Plan"). The VHS Chapter 9 Plan specifically addressed the treatment of claims by participants in the VHS Retirement Plan. Section I.A.(64) of VHS's Chapter 9 Plan states:

> **VHS Retirement Plan** means the "Valley Health System Retirement Plan Adopted January 1, 1971", as amended. Under section 4.8 of the VHS Retirement Plan, the plan was frozen effective May 4, 1999, such that the "Accrued Benefit" of each plan participant was frozen as of this date, and participants have accrued no benefits under the plan since such date.[4]

Participants in the VHS Retirement Plan are defined in Section I.A.(22) as "**Defined Benefit Plan Participants**."[5] The interests of Defined Benefit Plan Participants are treated as unimpaired in Class 2C of VHS's Chapter 9 Plan, which states in pertinent part:

> Defined Benefit Plan Participants will be entitled to the same rights and benefits to which such participants are currently entitled under the VHS Retirement Plan and the MetLife Group Annuity Contract,[6] and such participants shall have no recourse to the District or to any assets of the District, and shall not be entitled to receive any distribution under this Plan. Instead, all unallocated amounts held by MetLife Group, pursuant to the VHS Retirement Plan and the MetLife Group Annuity Contract, will continue to be made available to provide retirement benefits for all participants in the manner indicated under the provisions of the VHS Retirement Plan and the MetLife Group Annuity Contract. Accordingly, the treatment of Allowed Class 2C Claim holders set forth herein shall not affect any

---

Valley Health System in Each Challenge Action [Dkt. # 881] entered in Case No. 6:07-bk-18293-PC on April 26, 2010 (the "Confirmation Order").

[3] Chapter 9 Plan, 23:26-24:6; Confirmation Order, 3:18-4:16.

[4] Chapter 9 Plan, 10:3-6.

[5] Id. at 5:10-11.

[6] "MetLife Group Annuity Contract means the MetLife Group Annuity Contract No. 884 as amended, pursuant to which the VHS Retirement Plan is administered by MetLife Group." Id. at 6:17-19.

> legal, equitable or contractual rights to which the VHS Retirement Plan participants are entitled.[7]

On January 25, 2012, Reichardt filed a Petition for Writ of Mandate Pursuant to Code of Civil Procedure § 1085 Re: (1) Violation of the California Constitution in Case No. RIC 120152, styled Reichardt, et al. v. Valley Health System, et al., in the Superior Court of California, County of Riverside ("Reichardt I"). Reichardt amended the petition on January 26, 2012 ("Reichardt I Complaint"). The Reichardt I Complaint names as Defendants (1) Valley Health System, A California Local Health Care District, Retirement Plan, as a separate entity; (2) Vinay M. Rao, Glenn Holmes, Madeline Dreier, Amelia Hippert, Dr. William Cherry, Tom Wilson, Dean Deines, Joel Bergenfeld and Michele Byrd, as "Plan Trustees," and (3) MetLife, as "holding the trust funds" of the plan.[8] The Reichardt I Complaint alleges, in pertinent part, that (1) the VHS Retirement Plan fails to comply with the California Pension Protection Act of 1992;[9] (2) actions were taken by VHS, through its board of directors, in violation of the California Pension Protection Act of 1992 and the Ralph M. Brown Act;[10] (3) the Plan Trustees knowingly made false representations to plan participants; and (4) the Plan Trustees "breached their Constitutionally-mandated obligations and fiduciary duties to [Reichardt] and the Public" in the administration, management and funding of the VHS Retirement Plan.[11] The Reichardt I Complaint seeks injunctive relief, an unspecified amount of damages for an alleged underfunding of the VHS Retirement Plan, and reasonable attorneys' fees and costs.

---

[7] Id. at 16:8-22 (emphasis added).

[8] Petitioners' Notice of Motion and Motion for Remand to State Court, or in the Alternative, for Abstention ("Reichardt I Remand Motion") [Dkt. # 7] filed in Adversary No. 6:12-ap-01032-PC on February 29, 2012, Exhibit B at 22:9.

[9] Cal. Const., Art. XVI, § 17.

[10] Cal. Gov't Code § 54950, et. seq.

[11] Reichardt I Remand Motion, Exhibit B at 22:6-7.

On January 27, 2012, VHS removed Reichardt I to this court pursuant to 28 U.S.C. § 1452(a) and FRBP 9027.[12] Reichardt I was denominated Adversary No. 6:12-ap-01032-PC. In the Reichardt I Removal Notice, VHS states:

> This Court has subject matter jurisdiction over the Litigation because of, inter alia, the close nexus between the Litigation and the District's chapter 9 case, as the Litigation may potentially have had a profound and adverse impact on the District's chapter 9 case, its property and its ability to implement the Chapter 9 Plan. Also, the Litigation requires a determination of whether the causes of action are based on obligations governed by the Confirmation Order, and the impact of the Confirmation Order's discharge and injunction provisions on such claims, which should be resolved by this Court as this Court is intimately familiar with the District's case and the proper procedural mechanisms that were enacted in establishing deadlines for claims. Finally, if the Litigation is prosecuted in the state court, unfettered by the Confirmation Order, it is conceivable that Petitioners will be allowed to attach or execute on property of the District and eliminate any distribution to those creditors who timely filed claims and to whom distributions were allocated under the Chapter 9 Plan. The Chapter 9 Plan provides for the payment of approximately $21 million to creditors. To date, only a fraction of these funds have been distributed to priority creditors. Because unsecured creditors still have not received any distributions as claims are still being adjudicated, the bulk of these funds remains available. Therefore, the Litigation may not only impact the bankruptcy case, but it can completely undermine the implementation of the Chapter 9 Plan that was overwhelmingly accepted by voting creditors and approved by this Court.[13]

Four specific concerns sparked removal of Reichardt I to this court:

> First, the caption of the [Reichardt I Complaint] names "Valley Health System, a California Healthcare District Retirement Plan" as a Respondent. However, notwithstanding the Petitioners' assertion that the Plan is a sui generis entity that can be sued, it is not . . . and, therefore the acts and omissions complained of in the [Reichardt I Complaint] might be legally attributable to the District.
>
> Second, the [Reichardt I Complaint] fails to specify which entities or individuals, either those named in the [Reichardt I Complaint] as Respondents or otherwise, would be responsible for damages if damages are awarded, or would be subject to other relief requested in the [Reichardt I Complaint]. Thus, it appears that the

[12] Notice of Removal of Civil Action Under 28 U.S.C. § 1452(a) [Dkt. # 1] filed in Adversary No. 6:12-ap-01032-PC on January 27, 2012 ("Reichardt I Removal Notice").

[13] Id. at 5:17-6:6.

> District may be subject to potential damage claims and/or other relief requested in the [Reichardt I Complaint].
>
> Third, as employees or directors of a public entity, the Respondent PLAN TRUSTEES are entitled to be indemnified by the District under California Government Code sections 825-825.6. The District is thus potentially liable to each PLAN TRUSTEE for defense costs and any payments that the PLAN TRUSTEES may be required to make as a result of a settlement or judgment. Accordingly, by asserting purported claims and causes of action against the PLAN TRUSTEES, the Petitioners are circumventing the injunction and discharge provisions of the Confirmation Order and putting at risk, property of the District.
>
> Because the time frame covered by the [Reichardt I Complaint] is unspecified, the PLAN is not a separate legal entity, and the District may be directly or indirectly liable for any damages awarded to Petitioners as a result of the actions or inactions taken by the PLAN TRUSTEES, the causes of action and the damages sought by Petitioners may directly or indirectly impact the property of the District that has been allocated under the Chapter 9 Plan for payment to the District's creditors holding allowed claims.[14]

On February 27, 2012, Reichardt filed the Reichardt I Remand Motion asserting that the "State Action is neither a core proceeding nor a related proceeding and, therefore, the court lacks subject matter jurisdiction to hear the matter."[15] Shortly thereafter, the parties agreed to stay this adversary proceeding to explore mediation in Adversary No. 6:10-ap-01566-PC, Kirton, et al. v. Valley Health Systems, et al., on March 6, 2011, affirmed by the United States Bankruptcy Appellate Panel in Kirton v. Valley Health Sys. (In re Valley Health Sys.), 2015 WL 777685 (9th Cir. BAP 2015), and appealed to the Ninth Circuit Court of Appeals in Case No. 15-60023 ("Kirton II").[16] On March 23, 2015, VHS filed its answer to the Reichardt I Complaint.[17]

---

[14] Id. at 4:21-5:16.

[15] Reichardt I Remand Motion, 2:6-7.

[16] Joint Status Report Regarding Stay of Matter [Dkt. # 29] filed in Adversary No. 6:12-ap-01032-PC on November 20, 2012, at 3:22-24.

[17] Defendant Valley Health System, A California Local Health Care District's Answer to Complaint for Violation of the California Constitution [Dkt. # 40] filed in Adversary No. 6:12-ap-01032-PC on March 23, 2015.

On July 24, 2015, the court entered an order staying this adversary proceeding pending a final ruling by the Ninth Circuit in Kirton II.[18] After the Ninth Circuit affirmed and a mandate was issued in Kirton II,[19] this court vacated its Stay Order and set a briefing schedule. VHS and MetLife filed their responses to the Reichardt I Remand Motion on February 6, 2018, to which Reichardt replied on March 29, 2018. After a hearing on April 12, 2018, the matter was taken under submission.

II. DISCUSSION

This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b), 1334(b) and 1452(a). This adversary proceeding involves claims that are both core and non-core under 28 U.S.C. § 157. Venue is appropriate in this court. 28 U.S.C. § 1409(a).

A. This Court Has Subject Matter Jurisdiction Over the Reichardt I Complaint.

Reichardt claims that the bankruptcy court lacks subject matter jurisdiction because the claims in Reichardt I neither arise under title 11, arise in a case under title 11, nor relate to a case under title 11. According to Reichardt, the claims made the basis of the Reichardt I Complaint are non-core because they "(1) do not fall within the 'catch-all' provisions of section 157(b) in that they do not involve matters concerning the administration of the District's estate; (2) do not arise in the context of determining whether or not to allow a claim; (3) do not involve the 'confirmation of plans'; and (4) are based purely on a question of state law."[20] Reichardt further asserts that this court does not have post-confirmation jurisdiction over the removed state court action because "no 'close nexus' exists to justify 'related to' jurisdiction."[21] "[T]he State Action," in Reichard's view, "does not affect the ability of the District to administer or enforce its Chapter 9 Plan."[22]

---

[18] Order Staying Adversary Proceeding [Dkt. # 41] entered in Adversary No. 6:12-ap-01032-PC on July 24, 2015 ("Stay Order").

[19] Kirton v. Valley Healty Sys. (In re Valley Health Sys.), 697 Fed. Appx. 522 (9th Cir. 2017).

[20] Reichardt Remand Motion, 8:16-9:2 (footnote omitted).

[21] Id. at 15:17-18.

"[J]urisdiction must be analyzed on the basis of the pleadings filed at the time of removal without reference to subsequent amendments." Sparta Surgical Corp. v. Nat'l Ass'n of Securities Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998). "[I]f a case was properly removed, a plaintiff cannot thereafter oust the federal court of jurisdiction by unilaterally changing the case so as to destroy the ground upon which removal was based." Millar v. Bay Area Rapid Transit District, 236 F.3d 1110, 1116 (9th Cir. 2002). "Once a federal court acquires removal jurisdiction over a case, it also acquires jurisdiction over pendant state law claims." Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709, 715 (9th Cir. 1990). "Dismissal of the federal claims does not deprive a federal court of the power to adjudicate the remaining pendant state claims." Id. "This longstanding rule is based on the policy that judicial economy, convenience, fairness and comity will sometimes best be served by the retention of jurisdiction by the federal court, particularly in instances where the trial date is imminent or where the federal court has performed a substantial amount of legal analysis that would need to be repeated by the state court if the case were remanded." Millar, 236 F.3d at 1116.

"Bankruptcy courts have subject matter jurisdiction over proceedings 'arising under title 11, or arising in or related to cases under title 11." In re Wilshire Courtyard, 729 F.3d 1279, 1285 (9th Cir. 2013) (quoting 28 U.S.C. § 1334(b)). "A bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 868 (9th Cir. 2005 (citation omitted). "After a bankruptcy plan has been confirmed, a bankruptcy court has 'related to' jurisdiction over "proceedings that have a close nexus to the bankruptcy plan or proceeding.'" Valley Health Sys., 584 Fed. Appx. 477, 479 (9th Cir. 2014) (quoting In re Pegasus Gold Corp., 394 F.3d 1189, 1194 (9th Cir. 2005). "A close nexus exists where a 'matter[ ] affects[s] the interpretation, implementation, consummation, execution, or administration of the confirmed plan.'" Id. (quoting Wilshire Courtyard, 729 F.3d at 1287). The "close nexus" test "requires particularized consideration of the facts and posture of each case, as the test contemplates a

[22] Id. at 15:16-17.

broad set of sufficient conditions and 'retains a certain flexibility.'" Wilshire Courtyard, 729 F.3d at 1289 (quoting Pegasus Gold, 394 F.3d at 1194).

The issue of whether this court has subject matter jurisdiction of the types of claims asserted in Reichardt I was resolved by the Ninth Circuit in Kirton. In Kirton, the mandamus petition (1) named VHS, the VHS Retirement Plan as a separate entity, MetLife, and the Plan Trustees as defendants; (2) alleged, in pertinent part, claims for breach of contract and violation of the California Pension Protection Act of 1992; and (3) sought damages for an alleged underfunding of the VHS Retirement Plan in excess of $100 million. See Kirton I, 471 B.R. at 559-60. The petition charged, inter alia, that the VHS Retirement Plan was underfunded, and that VHS, MetLife and the Plan Trustees had breached their respective fiduciary duties to prevent the alleged underfunding and/or to disclose such alleged underfunding to the beneficiaries. Id. Kirton sought a writ of mandamus directing VHS, the VHS Retirement Plan, MetLife, and the Plan Trustees to, among other things, fund the VHS Retirement Plan, disclose the alleged underfunding of the plan, and prosecute any action required to recover assets of the plan. Id. The mandamus petition in Kirton was removed to this court and dismissed without leave to amend. Id. at 562. On appeal, the BAP reversed holding that this court lacked subject matter jurisdiction.[23] The Ninth Circuit reversed the BAP and remanded with instructions to address the substantive issues raised on appeal, holding that this court had "related to" jurisdiction over Kirton's claims. Kirton, 584 Fed. Appx. at 480. In so holding, the Ninth Circuit pointed to the treatment of Defined Benefit Plan Participants under Class 2C of the Plan, stating:

> The resolution of [Kirton's] mandamus petition would "affect [ ] the interpretation [and] implementation . . . of the confirmed plan." Resolution of the mandamus petition would require a court to determine whether the confirmed plan discharged [Kirton's] claims – whether [Kirton has] any "recourse to [Valley Health System] or to any of [its] assets." Thus, there is a close nexus between the bankruptcy plan and the mandamus petition.

[23] Id. at 569. The BAP raised the issue of subject matter jurisdiction, sua sponte.

> Furthermore, a close nexus also exists where a proceeding requires interpretation of an order confirming a bankruptcy plan. . . . The resolution of [Kirton's] mandamus petition requires interpretation of the confirmation order. A court would need to determine whether the bankruptcy court's confirmation order enjoins [Kirton] from continuing their mandamus action. Thus, there is a close nexus between the bankruptcy plan and the mandamus petition.

Id. at 479 (citations omitted).

The substance of the Reichardt I Complaint in this case is nearly identical to the mandamus petition in Kirton. Reichardt (1) names the VHS Retirement Plan as a separate entity, MetLife, and the Plan Trustees as defendants; (2) alleges claims for breach of fiduciary duty, constructive fraud, false representations, and violations of the Ralph M. Brown Act and the California Pension Protection Act of 1992; and (3) seeks injunctive relief and an unspecified amount of damages for an alleged underfunding of the VHS Retirement Plan. Reichardt alleges, inter alia, that the VHS Retirement Plan was underfunded, and that the VHS Retirement Plan and the Plan Trustees committed fraud and breached their respective fiduciary duties to prevent the alleged underfunding or to disclose such alleged underfunding to the beneficiaries.

Reichardt claims that Reichardt I differs from Kirton in that the "case involves a violation of the California Constitution stemming from post-petition actions of the Plan Trustees occurring after the District's Chapter 9 Plan became effective."[24] Reichardt points to paragraphs 29 and 30 of the Reichardt I Complaint which allege that the Plan Trustees "significantly altered the management and administration of the PLAN by increasing the number of trustees from five (5) to seven (7) . . . without notice to the Plan Participants" in violation of the California Constitution.[25] Without addressing the merits of these allegations, the court notes that paragraphs 29 and 30 allege the only post-petition action discussed in the 15-page Reichardt I Complaint -- which otherwise bears a stark resemblance to the complaint in Kirton. Indeed, the Reichardt I Complaint, on its face, seeks a judgment recovering from VHS, the Plan Trustees,

---

[24] Plaintiffs' Reply to Response of Defendant MetLife Insurance and Valley Health System to Plaintiffs' Motion for Remand to State Court, or in the Alternative, for Abstention [Dkt. # 77] filed in Adversary No. 6:12-ap-01032-PC on March 29, 2018, at 1:14-15.

[25] Reichardt I Remand Motion, Exhibit B at 27:24-28.

and MetLife, jointly and severally, for alleged underfunding, i.e., "all of the Plan funds not already paid to the Plan."[26]

The Reichardt I Complaint necessarily involves an interpretation of VHS's Chapter 9 Plan and the Confirmation Order and may affect implementation of the Chapter 9 Plan and distributions to creditors under the plan. Even the allegations of paragraphs 29 and 30 necessarily require the court to interpret the Confirmation Order in light of the terms of the Chapter 9 Plan to determine whether the Confirmation Order enjoins Reichardt from continuing Reichardt I. Other issues presented in Reichardt I having a close nexus to administration of confirmed Chapter 9 Plan include (1) whether the Plan Trustees have a claim for indemnification against VHS; and (2) whether MetLife has a claim for indemnification against VHS and/or the Plan Trustees. Because the claims asserted against the VHS Retirement Plan in Reichardt I raise issues similar to Kirton concerning the interpretation and implementation of the Chapter 9 Plan and the Confirmation Order, this court has "related to" jurisdiction of Reichardt I and the claims made the basis of the Reichardt I Complaint in this adversary proceeding.

B. The Court Will Not Abstain from Exercising Jurisdiction.

Next, Reichardt asserts incorrectly that, to the extent this court has jurisdiction, "mandatory abstention by the bankruptcy court pursuant to 28 U.S.C. § 1334(c)(2) is required in this case[,]"[27] or alternatively, remand is appropriate given "discretionary abstention . . . under 28 U.S.C. § 1334(c)(1).[28] Section 1334(c)(2) states:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

---

[26] Id. Exhibit B at 33:1-2.

[27] Id. at 16:22-23.

[28] Id. at 17:2-3.

28 U.S.C. § 1334(c)(2) (emphasis added). Section 1334(c)(1) authorizes the "court in the interest of justice, or in the interest of comity with State courts or respect for State law, [to abstain] from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 1334(c)(1).

"Abstention can only exist where there is a parallel proceeding in state court." Sec. Farms v. Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers (In re Gen. Teamsters, Warehousemen & Helpers, Union Local 890), 124 F.3d 999, 1009 (9th Cir. 1997). Furthermore, "[s]ection 1334(c) abstention should be read in pari materia with section 1452(b) remand, so that the former applies only in those cases in which there is a related proceeding that either permits abstention in the interest of comity, section 1334(c)(1), or that, by legislative mandate, requires it, section 1334(c)(2)." Id. at 1010.

On January 27, 2012, VHS removed Reichardt I to this court leaving no action pending between the parties in state court. See, e.g., Schulman v. State of Ca (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001) ("[B]ecause there is no pending state proceeding §§ 1334(c)(1) and 1334(c)(2) are simply inapplicable to this case."); Sec. Farms, 124 F.3d at 1010 ("[I]t successfully removed this case to federal court. No other related proceeding thereafter exists."); In re Roman Catholic Bishop of San Diego, 374 B.R. 756, 760 (Bankr. S.D. Cal. 2007) ("[O]n two occasions the Ninth Circuit has held the abstention is inapplicable if there is no parallel proceeding in the state court."). There being no parallel proceeding in state court, Reichardt's request for abstention must be denied.

C. The Court Declines to Remand Reichardt I.

Section 1452(b) authorizes the bankruptcy court to remand a claim or cause of action to the court from which it was removed "on any equitable ground." 28 U.S.C. § 1452(b). "This 'any equitable ground' remand standard is an unusually broad grant of authority." McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417 (9th Cir. BAP 1999). "It subsumes and reaches beyond all of the reasons for remand under nonbankruptcy removal statutes." Id. Similarly, when a case is properly removed to federal court and the claim that formed the basis for removal is dropped, the court has discretion to either retain jurisdiction over the pendant state claims or

remand them to state court. See, e.g., Sanford v. Memberworks, Inc., 625 F.3d 550, 561 (9th Cir. 2010) ("A district court 'may decline to exercise supplemental jurisdiction' if it 'has dismissed all claims over which it has original jurisdiction.'" (citation omitted)); Harrell v. 20th Century Ins. Co., 934 F.2d 203, 205 (9th Cir. 1991) ("It is generally within a district court's discretion either to retain jurisdiction to adjudicate the pendent state claims or to remand them to state court."); Nishimoto, 903 F.2d at 712 ("The district court's decision whether to adjudicate pendent state law claims following final disposition of all federal claims is reviewed for abuse of discretion.").

In determining whether to remand a "related to" case to state court on equitable grounds, courts in the Ninth Circuit have considered the following fourteen non-exclusive factors (the Enron factors):

1. The effect or lack thereof on the efficient administration of the estate;
2. The extent to which state law issues predominate over bankruptcy issues;
3. The difficult or unsettled nature of applicable law;
4. The presence of a related proceeding commenced in state court or other non-bankruptcy proceeding;
5. The jurisdictional basis, if any, other than 28 U.S.C. § 1334;
6. The degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
7. The substance rather than the form of an asserted core proceeding;
8. The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
9. The burden on the bankruptcy court's docket;
10. The likelihood that the commencement of the proceeding in the bankruptcy court involves forum shopping by one of the parties;
11. The existence of a right to jury trial;
12. The presence in the proceeding of non-debtor parties;

13. Comity; and

14. The possibility of prejudice to the other parties in the action.

Citigroup, Inc. v. Pac. Inv. Mgmt. Co., LLC (In re Enron Corp.), 296 B.R. 505, 508 n.2 (C.D. Cal. 2003); see, e.g., Fed. Home Loan Bank of Chi. v. Banc of Am. Sec., LLC, 448 B.R. 517, 525 (C.D. Cal. 2011); Stichting Pensioenfonds ABP v. Countrywide Fin. Corp., 447 B.R. 302, 311 (C.D. Cal. 2010).

Reichardt acknowledges that the issue of remand turns on an application of Enron, but his motion contains little critical analysis of the specific factors purportedly weighing in favor of remand. Reichardt argues that "the District has not demonstrated that remanding the State Action to the State Court will hinder the California bankruptcy court's ability to efficiently administer the District's Chapter 9 Plan."[29] Reichardt claims that "comity and judicial efficiency dictate that California courts should have the right to adjudicate the exclusively, novel state law claims involving California-centric petitioners/respondents and complex, California centric claims" and that "[r]emand would display a proper respect for a state court's role in deciding a purely state law case."[30] Finally, Reichardt asserts that VHS's true motivation for removal was forum shopping with the goal of moving "the litigation from Riverside Superior Court to this Court for the District's convenience and the inconvenience of the Petitioners."[31]

In this case, the possibility of prejudice given the likelihood of inconsistent rulings weighs heavily against remand. Reichardt's claims against VHS, the Plan Trustees, and MetLife, individually and collectively, in Reichardt I are similar to the claims asserted by Reichardt and other Defined Benefit Plan Participants against VHS and/or the VHS Retirement Plan, MetLife and the Plan Trustees in Kirton and Reichardt II[32] – all of which are pending

---

[29] Id. at 18:7-9.

[30] Id. at 18:11-14.

[31] Id. at 18:24-26.

[32] On July 18, 2014, Reichardt and 151 other named plaintiffs claiming to be beneficiaries under the VHS Retirement Plan filed a complaint against The Valley Health System Retirement Plan,

MetLife, and the following individuals: Geoffrey Lang, Lloyd Dunn, Myron Grindheim, Patricia Tuller, William Blasé, William Cherry, Glenn Holmes, Madeleine Dreier, Vinay M. Rao, Amelia Hippert, Tom F. Wilson, Dean Deines, Joel Bergenfeld, and Michele Byrd (collectively, the "Plan Trustees"), in Case No. RIC 1406794, styled Reichardt, et al. v. The Valley Health System Retirement Plan, et al., in the Superior Court of California, County of Riverside ("Reichardt II"). Reichardt II alleging, in pertinent part, violations of the California Pension Protection Act, the Ralph M. Brown Act and the California Political Reform Act and causes of action for alleged breach of fiduciary duty, fraud, negligent misrepresentation, and breach of implied and express contract – all stemming from an alleged underfunding of the VHS Retirement Plan. Reichardt II seeks an accounting, injunctive relief, declaratory judgment, actual and punitive damages, and attorneys' fees.

On September 10, 2014, VHS removed the action to this court in Adversary No. 6:14-ap-01236-PC pursuant to 28 U.S.C. § 1452(a) and FRBP 9027. On October 20, 2014, Reichardt filed a motion with the United States District Court for the Central District of California seeking a withdrawal of the reference for "cause" pursuant to 28 U.S.C. § 157(d). Reichardt also requested, by separate motion, that the district court remand the proceeding to the state court pursuant to 28 U.S.C. 1452(b). On February 15, 2015, the district court declined to either withdraw the reference or remand. In so holding, the district court reasoned:

> The retirement plan at the heart of this matter is closely related to the bankruptcy proceedings. VHS was the party contractually obligated to fund the retirement plan, and any claims concerning its failure to do so necessarily implicate the Bankruptcy Court's prior confirmation order precluding pre-existing claims against VHS. While [Reichardt] tried to distance this case from the bankruptcy proceeding by excluding VHS as a defendant, the Court is unconvinced that these claims would not ultimately affect VHS. Namely, [Reichardt] fail[s] to persuade the court that VHSRP – rather than VHS—is a proper defendant, especially given the Bankruptcy Court's prior decision to the contrary, or that VHS would not ultimately be liable due to indemnity obligations. Given the likely effect of this litigation on VHS's confirmed Chapter 9 plan and the administration of the post-confirmation estate, these are core matters that are best resolved in Bankruptcy Court.
>
> Moreover, efficiency is best served by denying the Motion for Withdrawal of Reference. The Bankruptcy Court has dealt extensively with the parties, attorneys, and subject matter of these claims. The Court cannot ignore the repeated cases filed by [Reichardt's] counsel in state court asserting similar claims. The past cases each wound up in Bankruptcy Court, and [Reichardt] [is] seemingly trying everything to sidestep that Court's jurisdiction. The Court will not reward those efforts.
>
> Finally, [Reichardt's] arguments concerning a jury trial are unavailing. Given the stated factors, the Bankruptcy Court is best positioned to preside over the action at this time.

before this court. Fundamental issues common to each of the adversary proceedings include, but are not limited to: (1) whether the VHS Retirement Plan is a separate public entity that can be sued; (2) whether VHS, MetLife and/or the Plan Trustees had any contractual obligation to fund the VHS Retirement Plan prior to the petition date; (3) whether that obligation, if any, was modified by VHS's Chapter 9 Plan and Confirmation Order; (4) whether Reichardt has any recourse to VHS or any of its assets; (5) whether the Plan Trustees have a claim for indemnification against VHS; and (6) whether MetLife has a claim for indemnification against VHS and/or the Plan Trustees.

On January 11, 2011, this court dismissed Kirton's claims against VHS, the VHS Retirement Plan, Joel Bergenfeld, Vinay M. Rao, and Michele Bird, individually and in their capacities as Trustees of the VHS Retirement Plan (collectively, the "VHS Defendants") and MetLife in Kirton under F.R. Civ. P 12(b)(6) without leave to amend. In denying Kirton's motion for reconsideration, the court stated:

See Memorandum Re: Plaintiff's Motion for Remand and Metropolitan Life Insurance Company's Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment [Dkt. # 81] entered in Adversary No. 6:14-ap-01236-PC on July 24, 2015, at 6:13-7:9. While Reichardt's motions were pending before the district court, VHS filed a motion on November 13, 2014, seeking an order from the bankruptcy court confirming that VHS, not VHS Retirement Plan, is the real party in interest in Adversary No. 6:14-ap-01236-PC. In response thereto, Reichardt dismissed its complaint against VHS Retirement Plan on February 24, 2015, without prejudice. On March 16, 2015, the court dismissed Reichardt's claims against each of the Plan Trustees without prejudice pursuant to F.R.Civ.P. 4(m) and FRBP 7004(a)(1) leaving MetLife the only remaining defendant.

On April 17, 2015, MetLife filed its Motion for Judgment on the Pleadings, or in the Alternative, Summary Judgment. On May 6, 2015, Reichardt filed a motion seeking an order remanding the action to state court alleging that (1) the court lacked subject matter jurisdiction over the removed causes of action; or alternatively, (2) if the court had subject matter jurisdiction: (a) abstention was mandatory under 28 U.S.C. § 1334(c)(2); (b) factors weighed heavily in favor of discretionary abstention under 28 U.S.C. § 1334(c)(1); or (c) equitable grounds required a remand pursuant to 28 U.S.C. § 1452(b). By memorandum decision and order entered on July 24, 2015, the court denied Reichardt's motion to remand Reichardt II finding that (1) it had subject matter jurisdiction of Reichardt II; (2) abstention was inappropriate; and (3) "the relevant Enron factors as applied to the facts and circumstances of [the] adversary proceeding weighed heavily against remand." Id. at 19:17-19.

> Kirton's petition failed to state a plausible claim for relief against any of the VHS Defendants or MetLife. VHS had only one retirement plan – the VHS Retirement Plan identified in VHS's disclosure statement. Kirton's petition seeks damages in excess of $100 million under various theories for alleged under-funding of the VHS Retirement Plan since 1999. VHS filed a voluntary petition under chapter 9 in the above referenced bankruptcy case on December 13, 2007. Benefits accruing under the VHS Retirement Plan had been frozen since May 4, 1999. On the petition date, the VHS Retirement Plan was tantamount to a pre-petition contract between VHS and the plan participants. VHS's only funding obligations arose from its contractual obligations under the VHS Retirement Plan. The trustees of the VHS Retirement Plan had no contractual obligations under the plan in their individual capacities. Kirton received notice of VHS's bankruptcy and the deadline of August 25, 2008, within which to file proofs of claim.
>
> On April 26, 2010, an order was entered confirming VHS's chapter 9 plan of adjustment. VHS's confirmed plan treated allowed claims of VHS Retirement Plan participants in Class # 2. Kirton did not object to confirmation of VHS's plan, which contemplated a sale of substantially all of VHS's assets to Physicians for Healthy Hospitals, Inc. When the sale closed on October 13, 2010, VHS's confirmed plan of adjustment became effective and binding upon all parties in interest, including Kirton. VHS was then discharged from its pre-petition obligations to Kirton based upon or arising out of the VHS Retirement Plan except as provided by the confirmed plan and Kirton was enjoined from enforcing such obligations except as provided by the confirmed plan.
>
> Finally, the fact that MetLife, the VHS Retirement Plan administrator, had not joined the VHS Defendants' Motion to Dismiss or otherwise filed a responsive pleading in the adversary proceeding did not prevent the court from dismissing Kirton's claims against MetLife without leave to amend as well. In this case, MetLife was in an identical position to the VHS Defendants and Kirton's claims against MetLife, as set forth in the petition, were integrally related to those asserted against the VHS Defendants. It was, therefore, appropriate to dismiss the causes of action asserted in Kirton's complaint against all defendants, including MetLife, without leave to amend.[33]

On February 24, 2015, the bankruptcy court's decision to dismiss Kirton's complaint without leave to amend was affirmed by the United States Bankruptcy Appellate Panel of the Ninth

---

[33] Memorandum Decision Re: Motion by Petitioners for Reconsideration and Vacation of "Order Granting Respondents Valley Health System's, Valley Health Retirement Plan's, Joel Bergenfeld's, Vinay M. Rao's and Michele Byrd's Motion to Dismiss Petition for Writ of Mandate Pursuant to Code of Civil Procedure 1085 Re (1) Violation of Valley Health System's Retirement Plan; (2) Violation of California Constitution; (3) Breach of Contract; and (4) Declaratory Relief [Dkt. # 32] filed in Adversary No. 6:10-ap-01566-PC on February 24, 2011, at 8:12-10:16.

Circuit ("BAP"). Kirton v. Valley Health Sys. (In re Valley Health Sys.), 2015 WL 777685 (9th Cir. BAP 2015) ("Kirton II"). On September 12, 2017, the BAP's decision in Kirton II was affirmed by the Ninth Circuit. Kirton v. Valley Health Sys. (In re Valley Health Sys.), 697 Fed. Appx. 522 (9th Cir. 2017). A remand of Reichardt I to the state court risks inconsistent rulings because the Ninth Circuit's decision in Kirton II is inextricably linked to the final determination of fundamental issues common to Kirton, Reichardt I and Reichardt II.

The interest of judicial economy weighs against remand. This court is intimately familiar with VHS's bankruptcy, the VHS Retirement Plan, VHS's Chapter 9 Plan, the Confirmation Order, and the claims made the basis of the complaints in Kirton, Reichardt I, and Reichardt II regarding the VHS Retirement Plan. The potential indemnification claims of MetLife and the Plan Trustees are closely related to VHS's bankruptcy. Because the adjudication of such claims will necessarily involve an interpretation of the Chapter 9 Plan and Confirmation Order and an analysis of the impact on implementation and consummation of the plan, they must be resolved by this court. Judicial economy is best served by the retention of jurisdiction "where the federal court has performed a substantial amount of legal analysis that would be repeated by the state court if the case were remanded." Millar, 236 F.3d at 1116.

A party's right to a jury trial does not, of and by itself, require remand. As the Ninth Circuit explained in Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com), 504 F.3d 775 (9th Cir. 2007):

> [A] Seventh Amendment jury trial right does not mean the bankruptcy court must instantly give up jurisdiction and that the case must be transferred to the district court. Instead, the bankruptcy court is permitted to retain jurisdiction over the action for pre-trial matters. . . . [T]wo rationales justify this holding.
>
> First, allowing the bankruptcy court to retain jurisdiction over pre-trial matters, does not abridge a party's Seventh Amendment right to a jury trial. A bankruptcy court's pre-trial management will likely include matters of "discovery," "pre-trial conferences," and routine "motions," which obviously do not diminish a party's right to a jury trial. Moreover, even if a bankruptcy court were to rule on a dispositive motion, it would not affect a party's Seventh Amendment right to a jury trial, as these motions merely address whether a trial is necessary at all.

> Second, requiring that an action be immediately transferred to the district court simply because of a jury trial right would run counter to our bankruptcy system. Under our current system Congress has empowered the bankruptcy courts to "hear" Title 11 actions, and in most cases enter relevant "orders." As has been explained before, this system promotes judicial economy and efficiency by making use of the bankruptcy court's unique knowledge of Title 11 and familiarity with the actions before them. . . . Only by allowing the bankruptcy court to retain jurisdiction over the action until trial is actually ready do we ensure that our bankruptcy system is carried out.

Id. at 787-88 (emphasis in original).

Reichard has yet to expressly consent to the entry of final orders or a judgment by the bankruptcy court in this adversary proceeding, but lack of consent does not compel remand. To the extent that the claims made the basis of the Reichardt I Complaint may constitute non-core claims or "Stern claims,"[34] the bankruptcy court is authorized to hear such matters and "submit proposed findings of fact and conclusions of law to the district court" for entry of a final order or judgment by the district court "after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected." 28 U.S.C. § 157(c)(1).

Comity does not require remand. VHS removed the case to this court shortly after it was served with the Reichardt I Complaint. The case was pending in state court for only 2 days prior to removal. Discovery had not commenced nor were any motions pending at the time of removal. All defendants had yet to be properly served with the summons and complaint. To the extent this court must decide issues based on state law, Reichardt has not shown either that the state law applicable to such claims is difficult or unsettled or that state law issues predominate over bankruptcy issues.

Finally, the issue of forum shopping cuts both ways. This court's interest in deterring forum shopping weighs against remand. As the court noted in its earlier Memorandum Decision,

---

[34] "These claims are called 'Stern claims,' so named after the Supreme Court's decision in Stern v. Marshall, ___ U.S., ___, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). Stern claims are claims 'designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter.'" Mastro v. Rigby, 764 F.3d 1090, 1093 (9th Cir. 2014) (citation omitted).

"Reichardt appears determined to have a court other than the bankruptcy court preside over any proceeding by Defined Benefit Plan Participants asserting claims based upon the VHS Retirement Plan. Although removal of the repeated cases filed by Reichardt's counsel in state court on behalf of Defined Benefit Plan Participants has placed a burden on this court's docket, a remand would simply countenance Reichardt's repeated efforts to shop for a forum other than this court to hear his claims."[35]

Because the relevant Enron factors as applied to the facts and circumstances of this adversary proceeding weigh heavily against remand, the court will deny Reichardt's motion seeking a remand of the action to state court pursuant to 28 U.S.C. § 1452(b).

CONCLUSION

Based on the foregoing, the court will deny Reichardt's Remand Motion. A separate order will be entered consistent with this memorandum decision.

###

Date: April 17, 2018

Peter H. Carroll
United States Bankruptcy Judge

[35] Memorandum Re: Plaintiff's Motion for Remand and Metropolitan Life Insurance Company's Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment [Dkt. # 81] entered in Adversary No. 14-ap-01236-PC on July 24, 2015, at 19:17-22.