



NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION



5 In re:
6
7 VALLEY HEALTH SYSTEM, a
California Health Care District,

) Case No. 6:07-bk-18293-PC

) Chapter 9

MEMORANDUM DECISION

) Date: September 28, 2011

) Time: 9:30 a.m.

) Place: United States Bankruptcy Court

) Courtroom # 1539

) 255 East Temple Street

) Los Angeles, CA 90012

Debtor.

12 The Post-Effective Date Committee of Creditors of Valley Health System and Disbursing
13 Agent (collectively, the “Committee”) seeks an order disallowing a proof of claim filed by
14 Jessica Frances Lopez (“Lopez”) on August 22, 2008 (“Claim # 153-1”). Lopez claims
15 “retirement benefit[s]” in the amount of \$886,179, and seeks treatment of the entire amount as an
16 unsecured priority claim pursuant to § 507(a)(5).¹ The court, having considered the pleadings,
17 evidentiary record, and arguments of counsel, makes the following findings of fact and
18 conclusions of law pursuant to F.R.Civ.P. 52(a)(1), as incorporated into FRBP 7052 and applied
19 to contested matters in bankruptcy cases by FRBP 9014(c).

I. STATEMENT OF FACTS

21 Valley Health System, a California Local Health Care District (“VHS”), is a public
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24 ¹ Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the
25 Bankruptcy Code, 11 U.S.C. §§ 101-1330 after its amendment by the Bankruptcy Abuse
26 Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005). “Rule”
27 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”).

1 agency formed in 1946 under the State of California Local Health Care District Law.² VHS
2 serves a district that encompasses 882 square miles in the San Jacinto Valley in Riverside
3 County, California, with a population within the district of nearly 360,000. At its inception, VHS
4 operated only an 18-bed hospital purchased from the city of Hemet, California. On the petition
5 date, VHS owned and operated the Hemet Valley HealthCare Center, a nursing facility in Hemet,
6 California, together with three acute hospitals – Hemet Valley Medical Center, in Hemet,
7 California; Meniffee Valley Medical Center, in Sun City, California; and Moreno Valley
8 Community Hospital, in Moreno Valley, California. The cost of VHS’s comprehensive health
9 care system was financed, in large part, by two series of bonds issued by VHS (collectively, the
10 “Bonds”). U.S. Bank, as Indenture Trustee for the holders of the Valley Health System
11 Certificates of Participation (1993 Refunding Project) and the Valley Health System District
12 Revenue Bonds (Refunding and Improvements Project) 1996 Series A (“U.S. Bank”), VHS’s
13 largest creditor, was owed approximately \$84 million in principal and interest on the Bonds as of
14 the date of the petition.

15 On December 13, 2007, VHS filed a voluntary petition under chapter 9 in this case
16 disclosing approximately 5,000 creditors holding claims in excess of \$100 million. On January
17 16, 2008, U.S. Bank and SEIU, United Healthcare Workers - West (“SEIU”), a labor union that
18 had been certified as the bargaining representative for certain VHS employees, challenged VHS’s
19 eligibility under § 109(c)(5) to be a debtor under chapter 9. On February 20, 2008, the court
20 overruled the objections of U.S. Bank and SEIU to VHS’s petition and denied U.S. Bank’s
21 motion to dismiss, holding that VHS had established that it was eligible for relief under chapter 9
22 and “was unable to negotiate with creditors prior to the filing of its chapter 9 petition . . . because
23 negotiation was impracticable within the meaning of § 109(c)(5)(C).”³

25 ² Cal. Health & Saf. Code § 32000, et seq.

26 ³ In re Valley Health Sys., 383 B.R. 156, 165 (Bankr. C.D. Cal. 2008).

1 On October 14, 2009, VHS agreed to sell substantially all of its assets to Physician's for
2 Healthy Hospitals, Inc. ("PHH") for cash and other consideration having an aggregate value of
3 \$169,773,000 pursuant to an Asset Sale Agreement ("ASA") between the parties. On November
4 2, 2009, VHS filed a disclosure statement and proposed plan of adjustment predicated upon the
5 asset sale set forth in the ASA. At an election on December 15, 2009, VHS's proposed sale of
6 substantially all of its assets to PHH received voter approval by a wide margin. On December
7 16, 2009, VHS filed its First Amended Plan for the Adjustment of Debts of Valley Health
8 System Dated December 17, 2009 ("First Amended Plan"), together with a First Amended
9 Disclosure Statement With Respect to the Plan for the Adjustment of Debts of Valley Health
10 System Dated December 17, 2009 ("First Amended Disclosure Statement"). By order entered on
11 December 23, 2009, the court approved VHS's First Amended Disclosure Statement, established
12 confirmation procedures, and set a hearing on confirmation of VHS's First Amended Plan.

13 On February 9, 2010, the court commenced a hearing on confirmation of VHS's First
14 Amended Plan. Save the Hospitals, Inc., Prime Healthcare Services, Inc. and Prime Healthcare
15 Management, Inc. (collectively, "Prime"), which had sought unsuccessfully to purchase the
16 assets of VHS, objected to confirmation. On February 19, 2010, VHS filed a Modification of
17 First Amended Plan for the Adjustment of Debts of Valley Health System Dated December 17,
18 2009 ("Modification"). Following a lengthy evidentiary hearing, VHS's First Amended Plan, as
19 modified (the "Plan") was confirmed.⁴ On April 26, 2010, an order was entered confirming the
20 Plan (the "Confirmation Order"). The Effective Date of the Plan occurred on October 13, 2010.

21 Pursuant to paragraph 13 of the Confirmation Order,⁵ the Official Committee of
22

23 ⁴ See Prime Healthcare Mgmt, Inc. v. Valley Health Sys. (In re Valley Health Sys.), 429 B.R.
24 692, 752 (Bankr. C.D. Cal. 2010).

25 ⁵ Paragraph 13 of the Confirmation Order states:

26 Following the Effective Date, the adjudication of claims and the distribution of payments
27 to Class 2A creditors under the Plan shall be administered by the Disbursing Agent to be

1 Unsecured Creditors designated Alvarez & Marsal Healthcare Industry Group, LLC to serve as
2 the Class 2A Claims Allowance/Disbursing Agent (the “Disbursing Agent”).⁶ The Committee
3 succeeded the Official Committee of Unsecured Creditors following the Effective Date of the
4 Plan, and has the right to direct, and the responsibility of directing, the Disbursing Agent in the
5 performance of its duties under the Plan.⁷ The Disbursing Agent must review Class 2A claims,
6 file objections to Class 2A claims as are necessary and appropriate, and distribute funds on
7 account of such claims pursuant to the Plan.⁸ Article IX.A of the Plan requires that objections to
8 proofs of claim be filed not later than April 8, 2011.⁹

9 In its motion filed on April 8, 2011, the Committee sought the disallowance of 17 proofs
10 of claim under § 502(b)(1) on the grounds that each of the claims had been satisfied or released
11 pursuant to an order of the court and were unenforceable against VHS or property of VHS’s
12 bankruptcy estate. On September 16, 2011, Lopez filed a response to the Committee Motion

13 _____
14 appointed by the Creditors Committee prior to the Effective Date. The costs and fees
15 incurred for and by the Disbursing Agent shall be paid out of the funds paid to the Class
2A creditors by PHH pursuant to the ASA.

16 [¶] Motion for Order Disallowing Claims Which Have Been Satisfied or Released During the Case
17 (“Committee Motion”) 6:19-23.

18 [¶] Id. 6:23-26.

19 [¶] Section 16.A of Article I of the Plan, as modified, states:

20 Class 2A Claims Allowance/Disbursing Agent means the person or entity designated by
21 the Creditors Committee to: (a) assess the filed Class 2A proofs of claim and their
22 supporting documentation, if any, (b) object to the allowance of any Class 2A claim in
23 whole or in part, (c) receive from PHH all funds to be distributed to Class 2A, (d)
24 distribute pro rata (subject to subordination agreements entered into by holders of certain
Class 2A Claims) to the holders of Allowed Class 2A Claims all funds received from
PHH that remain after paying its fees and costs and those of any professional person it
retains to assist it in discharging its functions.

25 Modification 2:16-26.

26 [¶] First Am. Plan 23:10-15.

1 arguing that the relief sought by the Committee as to Claim # 153-1 should be denied for two
2 reasons:

3 First, VHSP¹⁰ was not named in the proceedings; nor were the majority of the
4 Participants. VHSP and its members who did not receive actual notice are not barred.
11 U.S.C. § 944(c).

5 Second, the Confirmation Order was procured by fraud.¹¹

6 The Committee filed its reply on September 21, 2011. After a hearing on September 28, 2011,
7 the matter was taken under submission.

8 II. DISCUSSION

9 This court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157(a) and
10 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is
11 appropriate in this court. 28 U.S.C. §§ 1408 & 1409(a).

12 A. Lopez's Claim # 153-1 is a Class 2C Claim

13 A proof of claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a).
14 Absent an objection, a proof of claim constitutes prima facie evidence of the validity and amount
15 of the claim under FRBP 3001(f). Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035,
16 1039 (9th Cir. 2000). The filing of an objection to a proof of claim “creates a dispute which is a
17 contested matter” within the meaning of FRBP 9014 and must be resolved after notice and
18 opportunity for hearing upon a motion for relief. Id.

19 When a creditor has filed a proof of claim that complies with the rules, thereby giving rise
20 to the presumption of validity, the burden shifts to the objecting party who must “present
21 evidence to overcome the prima facie case.” United States v. Offord Fin., Inc. (In re Medina),
22 205 B.R. 216, 222 (9th Cir. BAP 1996). To defeat the claim, the objector must come forward

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24 ¹⁰ “VHSP” or the “Valley Health System Pension Plan” are terms used by Lopez in her
25 response to the Committee Motion to describe the Valley Health System Retirement Plan
26 Adopted January 1, 1971, as amended (“VHS Retirement Plan”). Response to Objection to
27 Claim of Jessica Lopez (Claim # 153-1) (“Lopez Opposition”) 1:7.

¹¹ Lopez Opposition 29:28 - 30:2.

1 with sufficient evidence and “show facts tending to defeat the claim by probative force equal to
2 that of the allegations of the proofs of claim themselves.” Lundell, 223 F.3d at 1039 (quoting In
3 re Holm, 931 F.2d 620, 623 (9th Cir. 1991)). “[T]he objector must produce evidence which, if
4 believed, would refute at least one of the allegations that is essential to the claim’s legal
5 sufficiency.” Lundell, 223 F.3d at 1040 (quoting In re Allegheny Int’l, Inc., 954 F.2d 167, 173-
6 74 (3d Cir. 1992)) (emphasis in original). If the objector produces sufficient evidence to negate
7 one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove
8 the validity of the claim by a preponderance of the evidence. Ashford v. Consol. Pioneer Mortg.
9 (In re Consol. Pioneer Mortg.), 178 B.R. 222, 226 (9th Cir. BAP 1995), aff’d, 91 F.3d 151 (9th
10 Cir. 1996) (quoting Allegheny Int’l, 954 F.2d at 173-74). The ultimate burden of persuasion
11 remains at all times on the claimant. Lundell, 223 F.3d at 1039; Holm, 931 F.2d at 623.

12 The Committee has produced evidence to defeat Lopez’s Claim # 153-1. First, the only
13 Class 2 claims entitled to a distribution under the Plan are Allowed Class 2A Claims.¹² Lopez is
14 not the holder of an Allowed Class 2A Claim. Lopez is a “Defined Benefit Plan Participant,” as
15 that term is defined in Section I.A. of the Plan.¹³ Lopez was employed by VHS at the Hemet

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17 ¹² Section IV.D.2 of the Plan, which discusses the treatment of Allowed Class 2A Claims, states:

18 The holders of Allowed Claims classified into Class 2A shall receive their pro rata share
19 of \$17 million or such increased or reduced amount that will be available for payment of
20 such Claims . . . which distributions shall be paid in four equal annual installments
21 without interest, with the first payment to be made on the first anniversary of the Sale
22 Closing Date, and on each anniversary thereafter; provided, however, that such \$17
23 million may either be (a) increased by any unused portion of the \$4 million that PHH will
24 deposit into the PHH Administrative Claims Fund; or (b) reduced, at the time and in the
manner set forth in section 1.2.4.3 of the ASA, by any amount in excess of the \$4 million
that PHH may be required to deposit into the PHH Administrative Claims Fund to pay
Allowed Administrative Claims in full.

25 First Am. Plan 15:14-22.

26 ¹³ “Defined Benefit Plan Participants means the participants in the VHS Retirement Plan.” Plan
27 5:10-11. “VHS Retirement Plan,” as defined in Section I.A.64, “means the ‘Valley Health

1 Hospital from May 25, 1973 to October 7, 2010.¹⁴ She became vested in the VHS Retirement
2 Plan on March 25, 1985.¹⁵ She asserts a claim for “retirement benefit[s]” in the amount of
3 \$886,179. VHS’s Plan treats the interests of Lopez and other “Defined Benefit Plan
4 Participants” as unimpaired in Class 2C. Section IV.F of the Plan, which discusses the treatment
5 of Class 2C Claims, states:

6 **1. Impairment and Voting.**

7 Class 2C is Unimpaired by this Plan and, accordingly, the Defined Benefit Plan
8 Participants are not entitled to vote such Allowed Claims, if any, as they may
have to accept or reject this Plan.

9 **2. Treatment.**

10 Defined Benefit Plan Participants will be entitled to the same rights and benefits
11 to which such participants are currently entitled under the VHS Retirement Plan
12 and the MetLife Group Annuity Contract, and such participants shall have no
13 recourse to the District or to any assets of the District, and shall not be entitled to
14 receive any distributions under this Plan. Instead, all unallocated amounts held by
15 MetLife Group, pursuant to the VHS Retirement Plan and the MetLife Group
16 Annuity Contract, will continue to be made available to provide retirement
benefits for 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
legal, equitable or contractual rights to which the VHS Retirement Plan
participants are entitled.¹⁶

17 Therefore, Lopez is not entitled to a distribution of account of her Class 2C Claim under the
18 Plan.

19 Lopez seeks treatment of the entire amount of Claim # 153-1 as an unsecured priority
20 claim pursuant to § 507(a)(5). Section 507(a)(5) authorizes a fifth priority for “allowed

21 System Retirement Plan Adopted January 1, 1971', as amended. Under section 4.8 of the VHS
22 Retirement Plan, the plan was frozen effective May 4, 1999, such that the ‘Accrued Benefit’ of
23 each plan participant was frozen as of this date, and participants have accrued no benefits under
the plan since such date.” Id. 10:3-6.

24 ¹⁴ Declaration of Jessica Lopez (“Lopez Decl.”) 1:7-8.

25 ¹⁵ Id. 1:23-24.

26 ¹⁶ First Am. Plan 16:7-22.

1 unsecured claims for contributions to an employee benefit plan –

2 (A) arising from services rendered within 180 days before the date of the filing of the
3 petition or the date of the cessation of the debtor's business, whichever occurs first; but
4 only

4 (B) for each such plan, to the extent of –

5 (i) the number of employees covered by each such plan multiplied by \$11,725;
6 less

6 (ii) the aggregate amount paid to such employees under [§ 507(a)(4)], plus the
7 aggregate amount paid by the estate on behalf of such employees to any other
8 employee benefit plan.

8 11 U.S.C. § 507(a)(5). Lopez's Claim # 153-1, however, is not entitled to priority treatment
9 under § 507(a)(5). Even if Claim # 153-1 fell within the scope of § 507(a)(5), § 507(a)(5) is not
10 applicable to chapter 9 cases as a matter of law.¹⁷ See 11 U.S.C. § 901(a).

11 **B. Lopez Had Notice of VHS's Bankruptcy, Plan and Applicable Deadlines**

12 Lopez argues that the Committee Motion should be denied by virtue of § 944(c)(2),
13 arguing that the VHS Retirement Plan "was not named in the proceedings; nor were the majority
14 of the [p]articipants" and that the VHS Retirement Plan "and its members who did not receive
15 actual notice are not barred."¹⁸ Section 944(c)(2) states, in pertinent part, that a debtor in chapter
16 9 is not discharged from any debt "owed to an entity that, before confirmation of the plan, had
17 neither notice nor actual knowledge of the case." 11 U.S.C. § 944(c)(2). The only issue before
18 the court is whether Lopez had notice of VHS's bankruptcy and sufficient opportunity to heard
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21 ¹⁷ Section II.C of the Plan, which deals with priority claims, states:

22 The only kind of priority claims incorporated into Chapter 9 through Section 901 are
23 Administrative Claims allowed under section 507(a)(2) of the Code. The treatment of all
24 such Administrative Claims is set forth in Sections II.A.1 and II.A.2. No other kinds of
25 priority claims set forth in section 507 of the Bankruptcy Code are recognized in chapter
26 9 cases.

25 First Am. Plan 12:10-14.

26 ¹⁸ Lopez Opposition 29:28-30:1.

1 with respect to her claim in the case.¹⁹ In that regard, the court takes judicial notice of the
2 following documents:

- 3 1. Affidavit of Service Re: Notice of Commencement of Chapter 9 Case; Deadline
4 for Objections to Petition; and Related Matters which shows that Lopez was
5 served with notice by VHS of the filing of its chapter 9 petition by United States
6 mail, first class mail, postage prepaid, at 403 E. Acacia, Hemet, CA 92343 on
7 December 19, 2007.²⁰
- 8 2. Affidavit of Service Re: (1) Notice of Bar Date; and (2) Proof of Claim Form
9 which shows that Lopez was served with notice by VHS of the deadline by which
10 to file a proof of claim in the case by United States mail, first class mail, postage
11 prepaid, at 403 E. Acacia, Hemet, CA 92343 on July 3, 2008.²¹
- 12 3. Affidavit of Service Re: Notice of: (1) Entry of Order Approving Valley Health
13 System's First Amended Disclosure Statement; (2) Hearing on Confirmation of
14 the First Amended Plan for the Adjustment of Debts of Valley Health System; and
15 (3) Plan Confirmation Procedures and Deadlines; Book Containing Solicitation
16 Information for Valley Health System; Ballot for Accepting or Rejecting Plan
17 (Classes 2A & 2B); Stutman Treister & Glatt Letter to All Creditors and Other
18 Parties in Interest in the Valley Health System Chapter 9 Case; and Pachulski
19 Stang Ziehl Jones Letter to the Unsecured Creditors of Valley Health System in
20 Chapter 9 Bankruptcy Case No. 07-BK-18293-PC (Bankr. C.D. Cal.) which
21 shows that Lopez was served with notice by VHS of the hearing on confirmation
22 of the plan and the deadline by which to file an objection to confirmation in the
23 case by United States mail, first class mail, postage prepaid, at 403 E. Acacia,
24 Hemet, CA 92343 on December 29, 2009.²²

17 ¹⁹ Lopez filed concurrently with her response the Declaration of Jasmine A. Duel ("Duel"), an
18 attorney, who has collected 74 declarations from individuals whose pension plans were affected
19 as a result of the debtor's bankruptcy. Duel indicates that she created a spreadsheet and divided
20 the declarants into various categories such as those who received notice of the bankruptcy, those
21 that did not, and those who were assured not to worry about the bankruptcy, among other
22 categories. Duel's declaration is neither relevant nor probative of whether Claim # 153-1 should
23 be allowed or whether Lopez had notice of VHS's bankruptcy prior to confirmation.

21 ²⁰ Affidavit of Service Re: Notice of Commencement of Chapter 9 Case; Deadline for
22 Objections to Petition; and Related Matters Ex. 2, 40, filed January 23, 2008, Docket # 62.

23 ²¹ Affidavit of Service Re: (1) Notice of Bar Date; and (2) Proof of Claim Form Ex. 3, 48, filed
24 July 15, 2008, Docket # 249.

25 ²² Affidavit of Service Re: Notice of: (1) Entry of Order Approving Valley Health System's First
26 Amended Disclosure Statement; (2) Hearing on Confirmation of the First Amended Plan for the
27 Adjustment of Debts of Valley Health System; and (3) Plan Confirmation Procedures and
Deadlines; Book Containing Solicitation Information for Valley Health System; Ballot for

1 Lopez had notice of VHS's bankruptcy case for purposes of § 944(c)(2). VHS gave
2 Lopez notice of the filing of the chapter 9 petition and notice of the deadline to file a proof of
3 claim in the case. The court infers that Lopez received notice from the fact that Lopez timely
4 filed Claim # 153-1 in this case on August 2, 2008 – 3 days prior to the deadline to file claims.
5 Lopez was given notice of the date and time of the hearing on confirmation of the Plan, as well
6 as the deadline for the filing of objections to confirmation of the Plan. Indeed, Lopez admits in
7 her declaration that she knew about VHS's bankruptcy prior to confirmation.²³ Despite such
8 notice, Lopez did not file an objection to confirmation or otherwise assert any defense to the
9 treatment of her Class 2C Claim under the Plan.

10 C. Lopez is Barred from Seeking Revocation of the Confirmation Order

11 Lopez further asserts that the Confirmation Order was procured by fraud and must be set
12 aside pursuant to § 105(a).²⁴ Lopez adds that she intends to seek relief under § 105(a) by motion
13 on behalf of herself and all other VHS Retirement Plan participants.²⁵ According to Lopez,
14 VHS's Plan was "designed to cut off any remedies they might otherwise have had against VHS,
15 while they were being induced to take no action."²⁶ Lopez describes the alleged fraud as a
16 "classic 'bait and switch' " in which VHS employees relied on representations that they did not
17 have to worry about VHS's bankruptcy allegedly made to induce reliance by such employees and
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20 Accepting or Rejecting Plan (Classes 2A & 2B); Stutman Treister & Glatt Letter to All Creditors
21 and Other Parties in Interest in the Valley Health System Chapter 9 Case; and Pachulski Stang
22 Ziehl Jones Letter to the Unsecured Creditors of Valley Health System in Chapter 9 Bankruptcy
Case No. 07-BK-18293-PC (Bankr. C.D. Cal.) Ex. A, 231, filed February 4, 2010, Docket # 775.

23 ²³ Lopez Decl. 4:3-9.

24 ²⁴ Lopez Opposition 2:22-24.

25 ²⁵ Id. 10:18-20.

26 ²⁶ Id. 10:21-25.

1 to lull them into a false sense of security.²⁷ In support of her contention, Lopez testified that Sam
2 Maizel, an attorney representing the Official Committee of Unsecured Creditors, told her that she
3 “did not need to be concerned with or do anything in connection with the VHS plan BECAUSE
4 IT DID NOT AFFECT [HER].”²⁸ She also testified that Dr. Girdhari S. Purohit assured the
5 attendees at an open forum held at the Hemet Hospital in 2010 that, with respect to the VHS
6 Retirement Plan, “ ‘all was going well and we had no need to worry, because the physicians had
7 no plans at this time to make any changes.’ ”²⁹ Dr. Pirohit also told attendees that “the
8 bankruptcy was taking a little longer than planned, but that it would have no effect on the
9 employees or their jobs.”³⁰ Lopez testified that she learned there was no money in the VHS
10 Retirement Plan at a subsequent board meeting held on July 7, 2010.³¹

11 Lopez contends that had she and other VHS Retirement Plan participants not been misled
12 into thinking they did not need to worry about VHS’s bankruptcy, they would have sought
13 separate legal counsel and other employees may have participated in the case by filing proofs of
14 claims, objecting to VHS Disclosure Statement, and objecting to confirmation.³² Lopez also
15 claims that, as a proximate cause of its conduct in the chapter 9 case, VHS is liable for damages
16 to VHS Retirement Plan participants of approximately \$20 million for alleged breach of fiduciary
17 duty, breach of contract, negligence, breach of trust, conversion and other causes of action.³³

18 Section 901 states that § 1144 applies in chapter 9 cases. See 11 U.S.C. § 901(a).

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20 ²⁷ Id.

21 ²⁸ Lopez Decl. ¶ 15.

22 ²⁹ Id. ¶¶ 7-8.

23 ³⁰ Id. ¶ 8.

24 ³¹ Id. ¶ 10.

25 ³² Lopez Opposition 11:8-14.

26 ³³ Id. 13:13-14:9; 29:9-10.

1 Section 1144 provides:

2 On request of a party in interest at any time before 180 days after the date of the entry of
3 the order of confirmation, and after notice and a hearing, the court may revoke such order
4 if and only if such order was procured by fraud. An order under this section revoking an
5 order of confirmation shall—

6 (1) contain such provisions as are necessary to protect any entity acquiring rights
7 in good faith reliance on the order of confirmation; and

8 (2) revoke the discharge of the debtor.

9 11 U.S.C. § 1144. Section 1144 is the only remedy for revocation of an order confirming a plan.

10 In re Orange Tree Assocs., Ltd., 961 F.2d 1445, 1447 (9th Cir. 1992). The expiration of the
11 limitation period bars a motion to set aside confirmation of a plan of reorganization even if the
12 fraud is not discovered until the period has passed. Id.; accord In re Mission Heights Investors
13 Ltd. P'ship., 202 B.R. 131, 138 (Bankr. D. Ariz. 1996) (usually-accepted discovery of the fraud
14 exceptions to a statute of limitations period are not available to plan confirmation challenges).

15 In Orange Tree Associates, the Ninth Circuit affirmed a bankruptcy court's order
16 dismissing a complaint to revoke a confirmation order filed after the 180-day limitations period
17 under § 1144. 961 F.2d at 1449. In so holding, the court stated:

18 Congress has determined that a 180-day limitations period strikes the appropriate balance
19 between the strong need for finality in reorganization plans and the interest in affording
20 parties in interest a reasonable opportunity to discover and assert fraud. In recognition of
21 the strength of the interest in finality of reorganization plans, courts have held uniformly
22 that strict compliance with section 1144 is a prerequisite to relief Expiration of the
23 limitations period bars a motion to set aside the confirmation of a reorganization plan
24 even if the fraud is not discovered until the period has passed.

25 Id. at 1447 (citation omitted).

26 In this case, the Confirmation Order was entered on April 26, 2010. The deadline to file a
27 motion seeking to revoke the Confirmation Order under § 1144 expired on October 23, 2010.
The 180-day deadline for seeking revocation of an order of confirmation is absolute and may not
be extended by the court. See FRBP 9024 ("Rule 60 F.R.Civ.P. applies in cases under the Code
except that . . . a complaint to revoke an order confirming a plan may be filed only within the
time allowed by § 1144"); In re Vencor, Inc., 284 B.R. 79, 83 (Bankr. D. Del. 2002) ("Even

1 if Rule 9024 did not expressly provide that a motion to revoke a confirmation order had to be
2 filed within the time specified in section 1144, such a request would still have to comply with the
3 time limits in that section rather than those in Rule 60(b). Rules of procedure may not modify
4 substantive law.”). Any motion by Lopez to revoke the Confirmation Order on the grounds of
5 alleged fraud is barred by § 1144.

6 Nor can Lopez obtain under § 105(a) relief that is barred by the specific provisions of §
7 1144. Section 105(a) authorizes the court to issue any order necessary or appropriate to enforce
8 that duty and to carry out the provisions of the Code. 11 U.S.C. § 105(a). A bankruptcy court
9 has broad discretion to shape equitable remedies in the exercise of its § 105(a) authority which
10 further Congressional intent. See Lemon v. Kurtzman, 411 U.S. 192, 200 (1973). However,
11 “section 105(a) does not provide bankruptcy courts with a roving writ, much less a free hand.
12 The authority bestowed thereunder may be invoked only if, and to the extent that, the equitable
13 remedy dispensed by the court is necessary to preserve an identifiable right conferred elsewhere
14 in the Bankruptcy Code.” Jamo v. Katahdin Fed. Credit Union (In re Jamo), 283 F.3d 392, 403
15 (1st Cir. 2002). A bankruptcy court may not use its equitable powers “ ‘to defeat clear statutory
16 language, nor to reach results inconsistent with the statutory scheme established by the Code.’ ”
17 Missoula F.C.U. v. Reinertson (In re Reinertson), 241 B.R. 451, 455 (9th Cir. BAP 1999)
18 (quoting Comm. of Creditors Holding Unsecured Claims v. Koch Oil Co. (In re Powerline Oil
19 Co.), 59 F.3d 969, 973 (9th Cir. 1995)); see Norwest Bank Worthington v. Ahlers, 485 U.S. 197,
20 206 (1988) (“The short answer to these arguments is that whatever equitable powers remain in
21 the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy
22 Code.”).

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III. CONCLUSION

For the reasons stated, the Committee’s motion to disallow Claim # 153-1 will be granted. A separate order disallowing Claim # 153-1 shall be entered consistent with this memorandum.

Dated: November 8, 2011

_____/s/_____
PETER H. CARROLL
Chief Bankruptcy Judge