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DOROTHY BROWN
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2019CH05553

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

VILLAGE OF MELROSE PARK,

Plaintiff,

v.

ILLINOIS HEALTH FACILITIES AND
SERVICES REVIEW BOARD; PIPELINE-
WESTLAKE HOSPITAL LLC, a Delaware
limited liability company; SRC HOSPITAL
INVESTMENTS II LLC, a Delaware limited
liability company,

Defendants.

People ex rel. KIMBERLY M. FOXX, State's
Attorney of Cook County,

Intervenor-Plaintiff,

v.

ILLINOIS HEALTH FACILITIES AND
SERVICES REVIEW BOARD; PIPELINE-
WESTLAKE HOSPITAL LLC, a Delaware
limited liability company; SRC HOSPITAL
INVESTMENTS II LLC, a Delaware limited
liability company,

Defendants.

Case No. 2019-CH-05553

6158151

**DEFENDANT SRC HOSPITAL INVESTMENTS II LLC'S RESPONSE TO
PLAINTIFFS' EMERGENCY PETITION FOR RULE TO SHOW CAUSE**

FILED DATE: 8/13/2019 2:03 PM 2019CH05553

Defendant SRC Hospital Investments II, LLC (“SRC”), by the undersigned counsel, respectfully submits this Response to the Emergency Petition for Rule to Show Cause (“Show Cause Petition”) filed by Plaintiff Village of Melrose Park (“Village”) and joined by Intervenor-Plaintiff the People of the State of Illinois *ex rel.* Kimberly M. Foxx, Cook County State’s Attorney (“State’s Attorney”) (collectively, “Plaintiffs”). For the reasons set forth below, the Show Cause Petition should be denied.¹

INTRODUCTION

As this Court observed when it denied the Village’s last Show Cause Petition, the Village “believe[s] that it can file [a Show Cause] Petition and later support it with testimony adduced at an evidentiary hearing. That’s not how contempt proceedings work: an evidentiary hearing to show cause only comes into play once [Plaintiff] makes out its case on the papers—which it has not done.” *See* May 14, 2019 Op. and Order at 1. As this Court has emphasized, the party who petitions for a finding of indirect civil contempt bears the initial burden of proving that the party it seeks to hold in contempt has violated a court order. Because the judge in such a proceeding “does not have full personal knowledge of the elements, . . . *proof of facts* . . . must be presented in order for the court to make a finding of contempt.” *In re Marriage of Knoll and Coyne*, 2016 IL App (1st) 152494, ¶ 52 (emphasis added).

¹ SRC also notes that, on August 9, 2019, SRC filed a motion to stay all proceedings in this case pending the outcome of Pipeline-Westlake Hospital LLC’s Chapter 7 bankruptcy proceeding. As Judge Valderrama recognized at the August 9 hearing, whether this case can proceed at all is a threshold issue that must be decided before the Court can rule on the Show Cause Petition. *See* Aug. 9, 2019 Hrg. Tr. 48:3-49:16, 57:4-58:17. In its opposition to SRC’s motion to stay, however, the Village argued that SRC’s motion should be denied because the Village contends that the automatic bankruptcy stay does not apply here. Village’s Resp. to M. to Stay at 3-5. As SRC explains in its reply in support of the motion to stay, the applicability of the automatic stay is a question for the federal Bankruptcy Court, not this Court. *See* SRC Reply to M. to Stay. Accordingly, Plaintiffs’ Show Cause Petition should be entered and continued along with SRC’s motion to stay.

Despite this Court's clear admonition, Plaintiffs have once again petitioned this Court for entry of a rule to show cause without presenting "proof of facts" that would support a contempt finding by the Court. Instead, Plaintiffs complain about alleged actions that either do not violate this Court's Order, or were not taken by SRC, or both.

Moreover, Plaintiffs' Show Cause Petition seeks relief that this Court cannot legally provide. This Court cannot order SRC to fund a bankruptcy Debtor; to do so would be in violation of the United States Bankruptcy Code. Similarly, the Court cannot hold SRC in contempt for failing to fund a bankruptcy Debtor because SRC would be unable to purge the contempt order without violating the Bankruptcy Code. Plaintiffs' Show Cause Petition is a blatant attempt to interfere with federal bankruptcy proceedings and must be denied.

FACTUAL AND PROCEDURAL BACKGROUND

The Court's May 7, 2019 Stay Order.

On May 7, 2019, the Court issued a 21-page opinion and order staying the effect of the April 30, 2019 order of the Illinois Health Facilities and Services Review Board granting the application of SRC and Pipeline-Westlake Hospital, LLC ("Pipeline-Westlake" or "Debtor") to discontinue services at Westlake Hospital ("Hospital"). *See* May 7, 2019 Op. and Order ("Stay Order"). On May 9, 2019, SRC and Pipeline-Westlake appealed the Stay Order to the Illinois Appellate Court. As this Court has recognized, that appeal (which remains pending) divested this Court of jurisdiction to modify the Stay Order in any way.

Efforts to Resolve the Underlying Dispute.

After the Stay Order was entered, the Parties engaged in a weeks-long effort, with the assistance of a former U.S. District Court judge, to reach a negotiated resolution of the underlying dispute. Those efforts were ultimately unsuccessful. Pipeline-Westlake also attempted to find a buyer for the Hospital, and communicated with a number of parties who said that they were

interested in potentially acquiring the Hospital; however, on August 1, 2019, Pipeline-Westlake was informed by the last of the interested parties that it could not pursue the transaction because of a lack of financing. Pet., Ex. 5-B ¶ 19. Throughout this time, Pipeline-Westlake and SRC continued to comply with the Court's Stay Order, causing Pipeline-Westlake to lose millions of dollars each month. See Pet., Ex. 5-B ¶ 17.

Pipeline-Westlake Files for Chapter 7 Bankruptcy.

On August 6, 2019, due to these mounting financial issues, Pipeline-Westlake filed for protection under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, as was its constitutional right. U.S.C. Const. Art. I, § 8, cl. 4. Pursuant to Chapter 7, on August 6, 2019, a Trustee was appointed to administer the case and manage Pipeline-Westlake's assets. The Bankruptcy Court also issued an order directing the appointment of a Patient Care Ombudsman ("PCO") pursuant to Section 333 of the Bankruptcy Code. See *In re Pipeline-Westlake Hospital, LLC*, 19-11757-KBO, Dkt. 12 (Bankr. Del. Aug. 6, 2019). On August 9, 2019, the Office of the United States Trustee filed a notice appointing Suzanne Koenig as the PCO. *Id.*, Dkt. 34.

The Chapter 7 Trustee is not controlled by Pipeline-Westlake (nor by SRC). Therefore, as of August 6, 2019, Pipeline-Westlake no longer controls its assets, including the Hospital. All decisions regarding the Hospital's operations are now up to the Chapter 7 Trustee.

The Village's Emergency Petition for Rule to Show Cause.

On August 8, 2019, the Village filed the pending Show Cause Petition.² The purported violations of the Stay Order by SRC that are asserted in the Show Cause Petition are in fact nonexistent, but fall into the following categories.

² The State's Attorney joined the Village's Show Cause Petition on August 9, 2019.

1. The Act of Filing for Bankruptcy.

At its core, Plaintiffs are asking this Court to hold SRC in contempt for having authorized Pipeline-Westlake's bankruptcy filing. Plaintiffs reference the filing of the bankruptcy petition half-a-dozen times in their short motion, asserting that Pipeline-Westlake filed for bankruptcy "at SRC's bidding" (Show Cause Pet. at 2); that SRC "authorized" the bankruptcy (*id.* at 5, 6, 7); that the bankruptcy "could not have happened absent SRC's direction," (*id.* at 6) and that SRC "restrict[ed]" the Chapter 7 Trustee from continuing to operate the Hospital (*id.*). As discussed below, however, the Stay Order does not (and cannot) enjoin bankruptcy relief. Moreover, Plaintiffs' conclusory statement that SRC "restricted" the Chapter 7 Trustee is unfounded and unsupported.³ See Aug. 13, 2019 Decl. of Nicholas Orzano ("Orzano Decl.") ¶ 5, attached as Exhibit A ("SRC has not restricted any of the Trustee's activities. SRC has not ordered the Chapter 7 Trustee to take any actions regarding Westlake Hospital."). In fact, as Plaintiffs are aware, Pipeline-Westlake moved the bankruptcy court for an order authorizing the Chapter 7 Trustee to *continue* its operations. See Show Cause Pet., Ex. 5-B. The fact that Pipeline-Westlake filed for bankruptcy (or that SRC authorized it to do so) cannot be the basis of a contempt finding.

2. Post-Bankruptcy Actions

Speaking mostly in passive voice, Plaintiffs next assert that certain alleged actions, taken by an unspecified party, after the filing of the bankruptcy petition violate the Stay Order. The Hospital "was put" on bypass (Show Cause Pet. at 7), the Hospital has "stopped accepting" new patient admissions (*id.*), the Hospital "is set to close" (*id.* at 2). Notably, Plaintiffs fail to inform

³ Plaintiffs also appear to blame SRC for the federal bankruptcy court's determination that Pipeline-Westlake's estate is unencumbered by prior judicially-imposed obligations. Show Cause Pet. at 6, n.3. It is without question that the bankruptcy court's decision cannot be a basis for a contempt finding.

the court that these actions were taken by the Chapter 7 Trustee, not SRC. Ex. A, Orzano Decl. ¶ 6. Actions taken by the Chapter 7 Trustee cannot be the basis for a contempt finding against SRC.⁴

Indeed, Plaintiffs admit that an entity *other than SRC* took certain actions. Plaintiffs complain that “*Pipeline* sent letters to its staff informing them that Westlake will close” (Show Cause Pet. at 2) and that “*Pipeline-Westlake* moved to transfer patients out of the hospital and shut down services” (*id.* at 6). Likewise, the Affidavit of Kathy Papazian, attached to the Show Cause Petition, attests that Andrea Saviozzi told her that the hospital “would be closing.” *Id.* at Ex. 4. But Ms. Saviozzi is not employed by SRC. Ex. A, Orzano Decl. ¶ 3. Again, these allegations regarding an entity *other than SRC* (apart from being inadmissible hearsay) cannot be the basis for a contempt finding against SRC.

In other instances, Plaintiffs attempt to link SRC to the actions of other entities without any basis for doing so. They claim that SRC “authorized the sending” of a letter sent by Westlake Hospital’s CEO without providing any evidence to support that claim. Show Cause Pet. at 7, Ex. 2. They likewise offer the baseless and unsupported assertion that SRC “endorsed” a letter despite the fact that the letter shows on its face that it was issued by Westlake Hospital’s CEO and the Chapter 7 Trustee. *Id.* at 7, Ex. 1; Ex. A, Orzano Decl. ¶ 7.

Plaintiffs also attempt to rely on, and then blatantly mischaracterize, inadmissible hearsay statements. Plaintiffs claim that SRC “put out a statement stating that the hospital will close.” Show Cause Pet. at 7. In support, Plaintiffs cite to a newspaper article which references a press release containing the following quote from “*Pipeline’s* CEO”: “it is the decision of the [Chapter 7] Trustee whether to continue operating the hospital beyond the initial period. If the Trustee

⁴ Notably, Plaintiffs repeatedly refer to the supposed “extra-judicial closure” of the Hospital, despite the fact that actions by the court-appointed Chapter 7 Trustee are pursuant to the judicial process that is federal bankruptcy. Show Cause Pet. at 2, 7.

chooses to close Westlake, our clinical team will work tirelessly with the Trustee so all of our current patients are safely transferred to one of the nearby community hospitals.” *Id.*, Ex. 6. That hearsay within multiple levels of hearsay is not a “statement that the hospital will close,” much less evidence that SRC is closing the Hospital. Again, this news article cannot be the basis for a contempt finding against SRC.

3. SRC’s Funding and/or Lack of Funding of Pipeline-Westlake.

Plaintiffs’ Show Cause Petition is vague as to how SRC has supposedly violated the Stay Order by its purported funding decisions. Plaintiffs first assert that SRC undercapitalized Pipeline-Westlake from the beginning and gave it “less than eight months of runway to operate the hospital.” Show Cause Pet. at 5. Even if this allegation were true (and Plaintiffs simply present it as an *ipse dixit*, with no support), and even if an entity’s decisions about how to capitalize an affiliate could support a contempt citation (a proposition for which Plaintiffs cite no authority), capitalization decisions that were made in 2018 based on the supposed expectation that Pipeline-Westlake would be closed “shortly after the beginning of the year” could not possibly violate a Stay Order that was not entered until May 7, 2019. *Id.* at 6, n.4. Moreover, since SRC was not funding the operations of the hospital as of April 30, 2019, the Stay Order cannot possibly be interpreted to require SRC to continue doing something that it was not doing as of April 30, and had in fact never done. Ex. A, Orzano Decl. ¶ 10. Nothing in the Stay Order requires changes to the capitalization or corporate structure of the two entities.

Plaintiffs’ assertion that SRC “is in a position” to indefinitely fund Pipeline-Westlake (Show Cause Pet. at 2, 6) is likewise unsupported. In fact, SRC has no money. Ex. A, Orzano Decl. ¶¶ 3, 10. It is a holding company that has no operations and no funds of its own. *Id.* The payment to the Chapter 7 Trustee that is referenced in Exhibit 2 to Plaintiffs’ Show Cause Petition was money that West Suburban Hospital, which is owned and operated by another entity affiliated

with SRC (*see* Ex. A, Orzano Decl. ¶ 2), provided to Pipeline-Westlake pursuant to an order of the bankruptcy court to ensure the safety of patients being transferred or discharged. *See* Pet., Ex. 5-B ¶¶ 29-33, Ex. 5-C ¶ 3. The fact that SRC, in consultation with the bankruptcy Trustee, arranged for this payment from West Suburban in no way supports Plaintiffs' attempt to have this Court either order SRC to provide funds to continue the operations of the Hospital, or hold SRC in contempt for not doing so.

LEGAL STANDARD

Plaintiffs' Show Cause Petition seeks to hold SRC in indirect civil contempt. Show Cause Pet. at 3. "Civil and criminal contempt are distinguished based upon *why* the contempt charge was brought." *Windy City Limousine Co. v. Milazzo*, 2018 IL App (1st) 162827, ¶ 38 (emphasis in original). Civil contempt is "a sanction or penalty designed to compel future compliance with a court order." *Felzak v. Hruby*, 226 Ill. 2d 382, 391 (2007) (internal quotation marks omitted). Because civil contempt "is a coercive sanction rather than a punishment for past contumacious conduct," a "valid purge condition is a necessary part of an indirect civil contempt order." *Id.* In other words, for a civil contempt order to be valid, the contemnor "must be able to purge the civil contempt by doing that which the court has ordered him to do." *Id.*; *see also In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 29 (2016) ("[A] finding of civil contempt is not proper unless the ability to purge a contempt finding is within the power of the contemnor.").

In the civil context, the Court may not find SRC in contempt without granting it "due process protections, including notice and the opportunity to be heard." *Windy City Limousine*, 2018 IL App (1st) 162827, ¶ 41. Moreover, the Court may not find SRC in contempt unless there is "proof of willful disobedience" of a court order. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 41 (1st Dist. 2010). The burden is on the Village, as an initial matter, to prove that SRC violated the Court's order. *Id.*

The Court also may not enter a contempt finding unless the order on which it is premised “sets forth with *certainty, clarity and conciseness* precisely what actions are enjoined.” *O’Leary v. Allphin*, 64 Ill. 2d 500, 513-14 (1976) (emphasis supplied). A contempt finding is inappropriate unless the allegedly violated order is “so specific and clear as to be susceptible of only one interpretation.” *Id.* at 514.

ARGUMENT

I. The Filing of a Bankruptcy Petition Does Not Violate the Stay Order.

Bankruptcy relief is a constitutional right. U.S. Const. Art. I, § 8, cl. 4. Article I, § 8, of the United States Constitution provides, in relevant part, that: “The Congress shall have Power ... To establish ... uniform Laws on the subject of Bankruptcies throughout the United States;” Congress uniformly legislates bankruptcy matters, and the federal bankruptcy courts serve as the trial courts adjudicating insolvencies. *See* 11 U.S.C. § 101, *et seq.*; 28 U.S.C. § 1334. In matters of bankruptcy, the jurisdiction of the federal court is essentially exclusive. *In re Watts*, 190 U.S. 1, 23 (1903).

It is telling that Plaintiffs do not cite a single case to support their absurd theory that filing for bankruptcy relief violates the Stay Order. It is well-established that a state court injunction cannot operate to deny a debtor the ability to petition for bankruptcy relief in federal bankruptcy court. *See In re Sino Clean Energy, Inc.*, 901 F.3d 1139, 1142 (9th Cir. 2018) (“where a state court purports to enjoin a corporation from filing bankruptcy altogether, federal law preempts that injunction”); *In re John Q. Hammons Fall 2006, LLC*, 573 B.R. 881, 896 (Bankr. D. Kan. 2017) (“bankruptcy law is paramount” to state law and “is essentially exclusive,” and federal courts “maintain exclusive jurisdiction of deciding who can and cannot be a bankrupt”); *In re Orchards Village Investments, LLC*, 405 B.R. 341, 349 (Bankr. D. Or. 2009) (“a state court receivership proceeding cannot be used to preclude a debtor from seeking federal bankruptcy protection”); *In*

re Kreisers, Inc., 112 B.R. 996, 1000 (Bankr. D.S.D. 1990) (a state court injunction cannot “bar the filing of an otherwise permitted bankruptcy,” due to “the grant of the exclusive bankruptcy jurisdiction to the federal courts and the constitutional principle of supremacy”); *In re S & S Liquor Mart, Inc.*, 52 B.R. 226, 227 (Bankr. D.R.I. 1985) (“it is fundamental that a state court receivership proceeding may not operate to deny a corporate debtor access to the federal bankruptcy courts”); *In re Donaldson Ford, Inc.*, 19 B.R. 425, 431 (Bankr. N.D. Ohio 1982) (held, a state court’s injunction “was ineffective to prohibit the Debtor in this case, through its officers and directors, from filing the petition for voluntary reorganization under Chapter 11”). *See also Esopus Creek Value LP v. Hauf*, 913 A.2d 593, 604–05 (Del. Ch. 2006) (“the Supremacy Clause of the United States Constitution and federal preemption jurisprudence prevent this court from issuing an order enjoining them from filing a bankruptcy petition”).

Moreover, Pipeline-Westlake’s filing for Chapter 7 bankruptcy relief does not, by itself, necessitate a shutdown of the Hospital. Pipeline-Westlake moved to allow the Chapter 7 Trustee to continue to operate the Hospital in the short term. *See* Pet., Ex. 5-B. It is up to the Chapter 7 Trustee to decide how to administer the estate. The Chapter 7 Trustee could seek a buyer for the Hospital, for example, who might purchase it and keep it open.⁵ Exercising the constitutional right to seek bankruptcy relief does not, and cannot, violate the Stay Order.

⁵ Plaintiffs appear to suggest that SRC should have sought a modification of the Stay Order to permit Pipeline-Westlake to seek bankruptcy relief. Show Cause Pet. at 6, n.3. As discussed herein, a modification is not necessary because the Stay Order does not and cannot enjoin Pipeline-Westlake from seeking bankruptcy relief. Regardless, however, the Stay Order is currently on appeal, which divests this Court of jurisdiction to modify it. *See* May 10, 2019 Hrg. Tr. 5:13-8:14.

II. Any Order Directing SRC to Provide Funds to Pipeline-Westlake Would Violate Federal Bankruptcy Law.

Under the United States Bankruptcy Code, the filing of a bankruptcy petition operates as an automatic stay of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). “Most subsections of § 362 are concerned . . . with efforts to obtain money from the estate or to reduce the estate’s ability to collect from others. Section 362(a)(3), however, reaches farther, *encompassing every effort to ‘exercise control over property of the estate.’*” *Nat’l Tax Credit Partners, L.P. v. Havlik*, 20 F.3d 705, 708 (7th Cir. 1994) (emphasis supplied); *In re Arthur B. Adler & Assocs., Ltd.*, 588 B.R. 864, 872 (Bankr. N.D. Ill. 2018) (“[T]he stay prohibits a wide array of actions [that] interfere with the property of the estate.”) Accordingly, Section 362(a)(3) stays even acts against third parties where such acts may affect the estate’s property. *See e.g., In re Application of County Treasurer and Ex Officio County Collector of Cook County*, 308 Ill. App. 3d 33, 43 (1st Dist. 1999); *Chrysler Rail Transportation Corp.*, No. 93C5140, 1996 WL 238788, at *2 (N.D. Ill. May 7, 1996).

It is undisputed that the Hospital is the property of the bankruptcy estate.⁶ *See e.g., Pet.*, Ex. 5-B ¶ 3. Plaintiffs’ request for this Court to issue an order directing SRC “to fund the Hospital so that it can continue to operate” (Show Cause Pet. at 6) would be an act to “exercise control” over the Hospital and would be in direct violation of Section 362(a)(3). *See, e.g., Wehmeier v. UNR Indus., Inc.*, 213 Ill. App. 3d 1095, 1096 at (4th Dist. 1990) (“We hold that because of the supremacy clause, the Code and the orders of the bankruptcy court acting pursuant thereto controlled over otherwise valid Illinois statutes, supreme court rules, common law principles, and

⁶ The “property of the estate” includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1).

State court orders involved in the plaintiffs’ attempts to enforce their judgments and rendered the attempt by the circuit court to enforce the judgments plaintiffs had obtained against the Trust void”).) As Judge Valderrama stated at the August 9 hearing, the contempt order sought by Plaintiffs “would be an order that would in fact directly implicate the ongoing bankruptcy proceeding and potentially a violation of the automatic stay.” Ex. B, Aug. 9, 2019 Hrg. Tr. 48:5-9. Indeed, Plaintiffs’ Show Cause Petition—a clear attempt to interfere with the bankruptcy proceeding—itself violates the automatic stay because it seeks relief related to the Debtors’ property and, specifically, seeks to require that a non-debtor party, other than the Chapter 7 Trustee, take an action that would take control over property of the Debtor’s estate. This Court should decline to entertain Plaintiffs improper request.⁷

III. A Civil Contempt Order Would Be Invalid Because SRC Could Not Purge the Contempt.

For a civil contempt order to be valid, the contemnor “*must* be able to purge the civil contempt by doing that which the court has ordered him to do.” *Felzak*, 226 Ill. 2d at 391 (emphasis added). In *Marriage of O’Malley*, for example, the husband failed to comply with a trial court judgment requiring him to either place the marital home for sale on or before September 1, 2007, or buy out the wife’s interest. 2016 IL App (1st) 151118, ¶¶ 3, 6. On January 5, 2012, the court ordered the husband to show cause why he should not be held in contempt for failing to comply with the judgment. *Id.* ¶ 8. On May 18, 2012, the home was sold, and on April 2, 2014, the husband was held in indirect civil contempt. *Id.* ¶¶ 9, 18. The appellate court vacated the

⁷ In fact, the Debtor is seeking a declaratory judgment and injunctive relief in the bankruptcy court against Plaintiffs for violating the automatic stay by filing the instant Show Cause Petition. *See In re Pipeline-Westlake Hospital, LLC*, 19-50285-KBO, Dkt. 1 (Bankr. Del. Aug. 13, 2019). Federal courts have repeatedly held that a trustee can recover damages, in the form of costs and attorneys’ fees, for a knowing and willful violation of the automatic stay. *See, e.g., In re Arthur B. Adler & Assocs., Ltd.*, 588 B.R. at 874.

contempt finding because, once the home had been sold, the husband no longer had the ability to comply with the court's order, and consequently did not have the power to purge the contempt. *Id.* ¶¶ 29, 30, 32.

In this case, SRC is unable to direct the operations of the Hospital or otherwise keep the Hospital from closing. The Chapter 7 Trustee is responsible for all decisions regarding Pipeline-Westlake's assets, including operation of the Hospital. As discussed above, any attempt by SRC to control the Hospital would violate federal law. *See supra* Section II. But even if SRC were to provide the Chapter 7 Trustee with funds (which it cannot do), SRC cannot force the Chapter 7 Trustee to use that money to continue Hospital operations. The Chapter 7 Trustee could (and likely would) use the money to pay creditors instead. It would accordingly be improper for the Court to find SRC in contempt of the Stay Order for failing to maintain the operations of the Hospital, because SRC would not "be able to purge the civil contempt by doing that which the court has ordered" it to do. *Felzak*, 226 Ill. 2d at 391. As Judge Valderrama stated at the August 9, 2019 hearing, a contempt "order itself has to outline what it is that SRC must do. [The Court] cannot say in a contempt order figure it out. The contempt order has to say to SRC exactly what it is that it must do to purge the contempt. Otherwise, the order is void." Ex. B, Aug. 9, 2019 Hrg. Tr. 25:2-7; *see also id.* 48:10-14 ("[A]t bottom, in order to purge itself of the contempt order that this Court would order, SRC would essentially have to take actions that are directly involved in the ongoing bankruptcy proceeding."). For this reason as well, Plaintiffs' Show Cause Petition should be denied.

IV. The Stay Order Does Not Clearly and Specifically Require SRC to Fund Hospital Operations.

As noted above, the Court also may not enter a contempt finding unless the order on which it is premised "sets forth with *certainty, clarity and conciseness* precisely what actions are

enjoined.” *O’Leary*, 64 Ill. 2d at 513-14 (1976) (emphasis supplied). The Stay Order does not require that SRC fund the Hospital’s operations or otherwise change the capitalization or corporate structure of Pipeline-Westlake. *See* Stay Order at 20-21. In fact, it specifically requires the Hospital to remain at the “status quo” as of April 30, 2019. SRC was not providing funding to Pipeline-Westlake as of April 30, 2019. Ex. A, Orzano Decl. ¶ 10. As already noted, it is a holding company that does not have any liquid assets. The Stay Order, on its face, does not require SRC to take any affirmative conduct that it was not already taking on April 30, 2019.⁸ Plaintiffs’ strained interpretation of the Stay Order cannot be the basis for a contempt finding. *O’Leary*, 64 Ill. 2d at 514 (a contempt finding is inappropriate unless the allegedly violated order is “so specific and clear as to be susceptible of only one interpretation”).

V. Plaintiffs Have Not Established Any Violation of the Stay Order by SRC.

As the foregoing discussion makes clear, Plaintiffs have provided *no* competent evidence (or indeed, any evidence at all) that SRC has discontinued, or modified the scope of, any medical service offered by the Hospital on April 30, 2019. Plaintiffs likewise have provided *no* evidence that SRC has created conditions that change the status quo, such as terminating employees or contracts that result in insufficient staffing to provide the scope of services that were offered on April 30, or failing to maintain facilities, staffing or supply levels that interfere with providing the scope of services and adequate standard of care to patients that were provided on April 30. Plaintiffs also have provided *no* evidence that SRC has ordered the Hospital to go on emergency

⁸ Indeed, to require SRC to take such affirmative action, the Court would have had to enter a mandatory injunction, which requires a significantly higher burden of proof than a stay. *Madigan Bros., Inc. v. Melrose Shopping Ctr. Co.*, 130 Ill. App. 3d 149, 151 (1st Dist. 1984) (while injunction to preserve status quo requires a “fair question” as to right to relief, a mandatory injunction requires showing that need for relief is “clearly established and free from doubt”); *Grillo v. Sidney Wanzer & Sons, Inc.*, 26 Ill. App. 3d 1007, 1012 (1st Dist. 1975) (mandatory injunction is appropriate only where there is an “extreme urgency or great necessity” for relief that is “clearly established and free from doubt”).

room bypass without “good medical cause,” or failed to admit patients when “medically appropriate.” To the contrary, the evidence establishes that *SRC* has not taken any action with respect to hospital services since the filing of the bankruptcy petition because it does not and cannot control the Hospital or the Chapter 7 Trustee.

Civil contempt requires actual disobedience of an order. *See Cetera*, 404 Ill. App. 3d at 41. Plaintiffs’ allegations fail to suggest—let alone prove—that SRC violated the Stay Order. Instead, Plaintiffs seek impermissible relief that this Court cannot legally provide. Plaintiffs’ Show Cause Petition should be denied.

Dated: August 13, 2019

Respectfully submitted,

/s/ Ronald S. Safer

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CERTIFICATE OF SERVICE

I hereby certify that that on August 13, 2019, I caused a copy of the foregoing document to be electronically using the electronic filing system, which will generate notice of this filing to all counsel of record. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this Certificate of Service are true and correct.

/s/ Ronald S. Safer

Ronald S. Safer

4834-8051-4208, v. 4

Exhibit A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VILLAGE OF MELROSE PARK,

Plaintiff,

v.

ILLINOIS HEALTH FACILITIES AND
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WESTLAKE HOSPITAL LLC, a Delaware
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Case No. 2019-CH-05553

DECLARATION OF NICHOLAS ORZANO

I, Nicholas Orzano, depose and state as follows:

SRC's Corporate Structure

1. I am Co-President of SRC Hospital Investments II, LLC ("SRC").
2. SRC is a Delaware limited liability company. As shown in the organizational chart attached as Exhibit A, SRC is the parent company of six limited liability companies, three of

which operate Chicago-area hospitals: Pipeline-Westlake Hospital, LLC (“Pipeline-Westlake”), a Delaware limited liability company; Pipeline-West Suburban Medical Center, LLC, a Delaware limited liability company; and Pipeline-Weiss Memorial Hospital, LLC, a Delaware limited liability company.

3. SRC is a holding company. It does not conduct any operations of its own and does not have any assets other than a bank account (with a zero balance) and its ownership of all of the equity interests in the six affiliates. It does not have its own employees.

SRC’s Actions After Pipeline-Westlake’s Bankruptcy

4. On August 6, 2019, Pipeline-Westlake filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. A Trustee was appointed to control Pipeline-Westlake’s assets and manage the operation of Westlake Hospital.

5. SRC does not control the Trustee. SRC has not restricted any of the Trustee’s activities. SRC has not ordered the Trustee to take any actions regarding Westlake Hospital.

6. Since the August 6, 2019 bankruptcy filing, the Trustee, and not SRC, controls Pipeline-Westlake. Since the filing, SRC has not and cannot order Pipeline-Westlake to take actions regarding the operations of Westlake Hospital. Since the filing, SRC has not ordered Pipeline-Westlake, Westlake Hospital, or the Trustee to (1) transfer patients out of the hospital, (2) cease accepting new patients at the hospital, or (3) fire, furlough, terminate, or suspend any hospital staff. To the extent any such events have occurred since the filing, they were actions taken by Pipeline-Westlake at the direction of the Trustee.

7. SRC did not send the August 6, 2019 letter to employees and physicians of Westlake Hospital that is attached as Exhibit 2 to Plaintiff’s Emergency Petition for Rule to Show Cause (the “Show Cause Petition”) or the August 7, 2019 letter to employees and medical staff or

Westlake Hospital attached as Exhibit 1 to the Show Cause Petition. The August 6, 2019 letter was sent by Joseph Ottolino, the Chief Executive Officer of Westlake Hospital. The August 7, 2019 letter was sent by Mr. Ottolino and the Trustee. Mr. Ottolino is not and has never been an officer or employee of SRC.

SRC is Not Funding Westlake Hospital

8. In their Show Cause Petition, Plaintiff cites the August 7, 2019 letter referenced in Paragraph 8 above to suggest that Pipeline is “still funding the hospital.” That is inaccurate.

9. The transfer of funds referenced in that letter was a transfer from West Suburban Hospital, not from SRC.

10. SRC is not and never has been the funding mechanism for the operations of the Hospital. In particular, SRC was not funding the operations of Westlake Hospital as of April 30, 2019. In fact, the balance in SRC’s sole bank account is \$0.00, and has been since before April 30, 2019.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: August 13, 2019

By:  _____
Nicholas Orzano

Exhibit A

SRC Hospital Investments II, LLC

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graph TD; A[SRC Hospital Investments II, LLC] --> B[Pipeline – Westlake Hospital, LLC, a Delaware limited liability company]; A --> C[Pipeline – West Suburban Medical Center, LLC, a Delaware limited liability company]; A --> D[Pipeline – Weiss Memorial Hospital, LLC, a Delaware limited liability company]; A --> E[Pipeline – Weiss Medical Specialists, LLC]; A --> F[Pipeline – Lakefront Medical Associates, LLC]; A --> G[Pipeline Midwest Pharmacies, LLC];
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Pipeline –
Westlake Hospital,
LLC, a Delaware
limited liability
company

Pipeline – West
Suburban Medical
Center, LLC, a
Delaware limited
liability company

Pipeline – Weiss
Memorial
Hospital, LLC, a
Delaware limited
liability company

Pipeline – Weiss
Medical
Specialists, LLC

Pipeline –
Lakefront Medical
Associates, LLC

Pipeline Midwest
Pharmacies, LLC

Exhibit B

STATE OF ILLINOIS)

) ss:

COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT - CHANCERY DIVISION

VILLAGE OF MELROSE PARK,)

Plaintiff,)

and) No. 2019 CH 5553

PEOPLE OF THE STATE OF)

ILLINOIS ex rel. KIMBERLY M.)

FOXX, STATE'S ATTORNEY OF)

COOK COUNTY,)

Intervenor-Plaintiff,)

v.)

ILLINOIS HEALTH FACILITIES)

AND SERVICES REVIEW BOARD;)

PIPELINE-WESTLAKE HOSPITAL,)

LLC; SRC HOSPITAL)

INVESTMENTS II, LLC,)

Defendants.)

Record of proceedings before the Honorable
FRANKLIN U. VALDERRAMA, Judge of the Circuit Court of
Cook County, Illinois, at Richard J. Daley Center,
Room 2402, 50 West Washington Street, Chicago,
Illinois, commencing at 9:38 a.m., on the 9th day of
August, A.D. 2019, upon the hearing of the
above-entitled case.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 EDELSON P.C. by</p> <p>3 MR. J. ELI WADE-SCOTT and</p> <p>4 MR. MICHAEL OVCA</p> <p>5 350 North LaSalle Street</p> <p>6 14th Floor</p> <p>7 Chicago, Illinois 60654</p> <p>8 (312) 242-0859</p> <p>9 ewadescott@edelson.com</p> <p>10 movca@edelson.com</p> <p>11 - and -</p> <p>12 CLARK HILL PLC by</p> <p>13 MR. KEVIN H. MORSE</p> <p>14 130 East Randolph Street</p> <p>15 Suite 3900</p> <p>16 Chicago, Illinois 60601</p> <p>17 (312) 985-5900</p> <p>18 kmorse@clarkhill.com</p> <p>19 on behalf of Plaintiff</p> <p>20 Village of Melrose Park;</p> <p>21</p> <p>22 STATE'S ATTORNEY'S OFFICE by</p> <p>23 MR. PAUL CASTIGLIONE,</p> <p>24 MS. CATHY McNEIL STEIN, and</p> <p>MS. PRATHIMA YEDDANAPUDI</p> <p>500 Richard J. Daley Center</p> <p>Chicago, Illinois 60602</p> <p>(312) 603-5365</p> <p>paul.castiglione@cookcountyil.gov</p> <p>cathymcneil.stein@cookcountyil.gov</p> <p>prathima.yeddnapudi@cookcountyil.gov</p> <p>on behalf of Intervenor-Plaintiff</p> <p>People of the State of Illinois</p> <p>ex rel. Kimberly M. Foxx, State's</p> <p>Attorney of Cook County;</p>	<p style="text-align: right;">Page 4</p> <p>1 (Whereupon the following proceedings</p> <p>2 were had in court.)</p> <p>3 MR. WADE-SCOTT: Good morning, your Honor.</p> <p>4 THE COURT: Good morning.</p> <p>5 MR. WADE-SCOTT: J. Eli Wade-Scott for the</p> <p>6 Village, along with Michael Ovca.</p> <p>7 MR. CASTIGLIONE: Your Honor, good morning. Paul</p> <p>8 Castiglione.</p> <p>9 MS. STEIN: Cathy McNeil Stein.</p> <p>10 MS. YEDDANAPUDI: Prathima Yeddnapudi.</p> <p>11 MS. STEIN: All on behalf of the People.</p> <p>12 MR. DESMOND: Conor Desmond on behalf of the</p> <p>13 Illinois Health Facilities and Services Review Board.</p> <p>14 THE COURT: Good morning.</p> <p>15 MS. HEMERYCK: Good morning, your Honor. Sondra</p> <p>16 Hemeryck, Ronald Safer, and Jack Theis on behalf of</p> <p>17 Defendant SRC Hospital Investments II, LLC. And we</p> <p>18 also have with us today John Weiss who is a</p> <p>19 bankruptcy attorney from the Duane Morris firm who</p> <p>20 has not yet appeared in the case, but he is here in</p> <p>21 the event there is a need to respond to questions</p> <p>22 about the bankruptcy issues.</p> <p>23 MR. DARKE: And Rick Darke with John Weiss'</p> <p>24 office.</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (Continued):</p> <p>2 ILLINOIS ATTORNEY GENERAL'S OFFICE by</p> <p>3 MR. CONOR DESMOND</p> <p>4 100 West Randolph Street</p> <p>5 13th Floor</p> <p>6 Chicago, Illinois 60601</p> <p>7 (312) 814-3149</p> <p>8 cdesmond@atg.state.il.us</p> <p>9 on behalf of Defendant Illinois</p> <p>10 Health Facilities and Services</p> <p>11 Review Board;</p> <p>12 RILEY, SAFER, HOLMES & CANCELA, LLP by</p> <p>13 MS. SONDR A. HEMERYCK,</p> <p>14 MR. RONALD S. SAFER, and</p> <p>15 MR. JACK THEIS</p> <p>16 Three First National Plaza</p> <p>17 70 West Madison Street</p> <p>18 Suite 2900</p> <p>19 Chicago, Illinois 60602</p> <p>20 (312) 471-8700</p> <p>21 shemeryck@rshc-law.com</p> <p>22 rsafer@rshc-law.com</p> <p>23 jtheis@rshc-law.com</p> <p>24 - and -</p> <p>DUANE MORRIS LLP by</p> <p>MR. JOHN R. WEISS</p> <p>190 South LaSalle Street</p> <p>Suite 3700</p> <p>Chicago, Illinois 60603-3433</p> <p>(312) 499-6700</p> <p>jeweiss@duanemorris.com</p> <p>on behalf of Defendant SRC Hospital</p> <p>Investments II, LLC.</p> <p>*****</p>	<p style="text-align: right;">Page 5</p> <p>1 THE COURT: So the matter is before the Court on</p> <p>2 the plaintiff's motion or -- yeah, petition for rule</p> <p>3 to show cause. Am I correct?</p> <p>4 MR. WADE-SCOTT: That's correct, your Honor,</p> <p>5 along with the State's Attorney's motion to join in</p> <p>6 that petition.</p> <p>7 THE COURT: Thank you. So on the -- let me start</p> <p>8 with the latter first. On the State's Attorney's</p> <p>9 petition, is there any objection to that petition?</p> <p>10 Just to join in the motion.</p> <p>11 MS. HEMERYCK: Our only objection would be the</p> <p>12 same objection that we had along, which is that we</p> <p>13 don't believe either of these plaintiffs, the State's</p> <p>14 Attorney or the Village, has any standing frankly to</p> <p>15 be here at all, much less to seek any kind of relief.</p> <p>16 Subject to that objection, we don't object.</p> <p>17 THE COURT: Does the movant wish to respond to</p> <p>18 that?</p> <p>19 MR. CASTIGLIONE: Well, I think the standing</p> <p>20 issue was ruled on by Judge Loftus, and we were</p> <p>21 allowed to intervene, and to the extent plaintiffs --</p> <p>22 well, they can't -- they haven't specifically been</p> <p>23 able to appeal that issue, the allowing us to</p> <p>24 intervene. They have appealed -- I'm sorry,</p>

<p style="text-align: right;">Page 6</p> <p>1 plaintiff. I misspoke. The hospital has appealed 2 the issuing of the stay order. And one of their 3 bases against us, against the People is that we 4 don't -- according to them, we don't have standing to 5 be there, we're not likely to succeed on the merits. 6 So to the extent they're appealing that, that issue 7 is up to the Appellate Court. It's already been 8 ruled on by Judge Loftus. We feel we do have 9 standing.</p> <p>10 Going back to the Ryan case, we're the only 11 ones who clearly without dispute in terms of the 12 Illinois law, the only case on point that we found is 13 Ryan saying that the State's Attorney has standing to 14 come in and enforce the act here.</p> <p>15 THE COURT: Let me stop you there without meaning 16 to interrupt you.</p> <p>17 MR. CASTIGLIONE: Right.</p> <p>18 THE COURT: We're not going to relitigate --</p> <p>19 MR. CASTIGLIONE: Right.</p> <p>20 THE COURT: -- the issue of standing this 21 morning.</p> <p>22 MR. CASTIGLIONE: Okay.</p> <p>23 THE COURT: So I didn't mean to do that.</p> <p>24 MR. CASTIGLIONE: You're right.</p>	<p style="text-align: right;">Page 8</p> <p>1 was purchased by Pipeline entities. The Village and 2 the State's Attorney argue that they defrauded the 3 Board and the community. And a series of injunctions 4 and orders were entered pending the resolution of 5 that case ordering a number of entities to keep 6 Westlake Hospital open. I believe that we agree with 7 defendants about all of those facts.</p> <p>8 I think that we likely agree as well about 9 the fact that there is a current order requiring SRC 10 Hospital Investments II, along with 11 Pipeline-Westlake, LLC, to operate the hospital. It 12 is very clear that they cannot close the hospital. 13 They cannot stop accepting patients. That's Judge 14 Loftus' May 7th order. I can't imagine there is any 15 debate about what that means.</p> <p>16 I also think that there is no factual debate 17 about what is going on right now, which is that they 18 are barreling towards closure at 3:00 o'clock today. 19 If there are still patients in the hospital -- I 20 believe there are, there are a few -- they have been 21 discharged to other hospitals or discharged to the 22 community. We have no idea and take no position on 23 that process. We just know that was happening. 24 There are other things happening at the</p>
<p style="text-align: right;">Page 7</p> <p>1 THE COURT: I was asking as a formality if the 2 respondent had an objection.</p> <p>3 MR. CASTIGLIONE: Yes. I got you.</p> <p>4 THE COURT: They had stated their objection for 5 the record. I am not going to reconsider or revisit 6 that issue. So I will grant the motion to join --</p> <p>7 MR. CASTIGLIONE: Thank you, your Honor.</p> <p>8 THE COURT: -- the petition for rule to show 9 cause. With that then, the petition is before the 10 Court. And I have read the petition, so I don't need 11 or want a lengthy regurgitation of what's already in 12 the petition, so if you would just highlight very 13 briefly for me the petition as well as the relief 14 which is in your petition that you're seeking and 15 also address how -- assuming I agree with everything 16 that you say in your petition, what effect, if any, 17 would it have on the pending bankruptcy. With that, 18 you may proceed.</p> <p>19 MR. WADE-SCOTT: Understood, your Honor. This 20 situation, but not this case, has been before your 21 Honor once before. I'm sure you're familiar with the 22 subject matter. It concerns Westlake Hospital, a 23 community hospital that has been operating in the 24 west suburbs for going on a hundred years now. It</p>	<p style="text-align: right;">Page 9</p> <p>1 hospital that we've heard about equipment being 2 removed. And we can present evidence on that if the 3 time comes for that. But we actually -- we think 4 there is no debate they're trying to close the 5 hospital as quickly as possible.</p> <p>6 So on the merits of the petition and then 7 the eventual rule were it to issue, I think there is 8 going to be basically no debate. They're trying to 9 close it. The order prevents them from doing so. 10 The only question is, does Pipeline-Westlake's 11 bankruptcy affect what SRC Hospital Investments has 12 to do.</p> <p>13 The order is very clear that SRC Hospital 14 Investments II is bound. SRC is the acting -- is the 15 only entity that has any agency here. The petition 16 itself for bankruptcy for Pipeline-Westlake is 17 extremely clear. It's Jim Edwards on behalf of SCR 18 Hospital Investments II directing the filing of the 19 bankruptcy, all of that. I think that also is beyond 20 debate that SRC is in charge. Really the only thing 21 that matters is that SRC is bound by this Court's 22 order, regardless of whether Pipeline-Westlake, LLC, 23 has filed bankruptcy.</p> <p>24 The courts have considered this issue about</p>

<p style="text-align: right;">Page 10</p> <p>1 automatic stay of litigation against a creditor. You 2 have to consider the fact that the automatic stay 3 doesn't apply to the entire case. You consider 4 different defendants. You don't have to stay an 5 entire action if there are different defendants. You 6 consider each issue separately. 7 So the order clearly runs against SRC and 8 Pipeline, and SRC has never made a peep about being 9 bound by this order. They didn't complain about it 10 when the order was entered. That issue has been 11 appealed. They didn't complain about it then. So 12 now if the long game was establish what we already 13 knew was basically a sham entity, the Court doesn't 14 have to rule on that. But they created an entity 15 ostensibly to operate this hospital that had eight 16 months of runway, which is pretty questionable in our 17 view. But the Court doesn't have to get into that. 18 What the Court does have to see is that SRC is bound 19 by this. They haven't objected to it until then. 20 Allowing them to hide behind Pipeline-Westlake's 21 bankruptcy is the culmination of the plan to close 22 it. Otherwise, they would just be allowed to create 23 this entity with no money in it, bankrupt it, and 24 then say we're out, we got away with it.</p>	<p style="text-align: right;">Page 12</p> <p>1 does it? 2 MR. WADE-SCOTT: It does, Judge, because SRC -- 3 at that point obviously it becomes SRC's problem 4 about how they are not violating the order. And as a 5 sort of procedural matter, that's a question that 6 would be called when SRC is trying to explain why 7 it's not violating the order, but I'll address it 8 now. There's a number of routes they can take to 9 stop this from happening. 10 THE COURT: I don't want you to -- and I don't 11 mean to interrupt you. 12 MR. WADE-SCOTT: Sure. 13 THE COURT: I don't want you to provide the game 14 plan for SRC. They can do that themselves. But my 15 point simply is this, though. I thought I read in 16 your motion, and maybe I misread it if I read it 17 incorrectly, that part of what you wanted, or want, 18 excuse me, is essentially for SRC to continue to 19 fund, for lack of a better term, Westlake. 20 MR. WADE-SCOTT: That's correct, Judge. 21 THE COURT: So that's my question. That's 22 ultimately what you want or my question -- let me 23 start again. My question is, is that what you would 24 be seeking through this petition.</p>
<p style="text-align: right;">Page 11</p> <p>1 And the fact is that that -- going back to 2 what contempt is, it undermines the power of this 3 Court to say there is an order binding SRC and 4 Pipeline-Westlake, and then they bankrupt one-half of 5 the entities that are bound by that order, and then 6 SRC walks away scot-free. 7 THE COURT: So my question, though, and I 8 appreciate that, but -- and I don't know if you were 9 getting to it, but I want to move it along, and I 10 haven't heard it yet. 11 MR. WADE-SCOTT: Of course, Judge. 12 THE COURT: The question I started with was, I 13 said, assuming that I agree with your petition, then 14 what is the order that you want this Court to issue. 15 It's a petition for rule to show cause. So if I were 16 to just agree with the petition and say that I am 17 going to set a date for SRC to show cause why it 18 should not be held in contempt, what is the contempt 19 order that you wish me to eventually, either be it 20 today or subsequently, to issue in this matter. 21 Isn't it an order -- if it's simply an order that 22 says that SRC has violated the stay order and 23 therefore is subject to monetary sanctions for having 24 violated it, that doesn't get you to what you want,</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. WADE-SCOTT: Yes, Judge, or figure out how 2 else not to violate the order. That's one easy way. 3 THE COURT: So my question then, and I'm going to 4 turn to SRC after this question, so my question would 5 be, assuming that I agree with that -- 6 MR. WADE-SCOTT: Understood. 7 THE COURT: -- how would then SRC purge itself of 8 the contempt order. 9 MR. WADE-SCOTT: By -- they can do several 10 things. They can operate the hospital, fund the -- 11 THE COURT: Right. Let me stop there. 12 MR. WADE-SCOTT: Yes, Judge. 13 THE COURT: Would operating the hospital now 14 implicate the stay that's in effect? 15 MR. WADE-SCOTT: They are the ones driving the 16 stay in the bankruptcy. 17 THE COURT: I understand. 18 MR. WADE-SCOTT: So they have a number of 19 different routes out of that. They could, for 20 instance, dismiss the bankruptcy, or they have had 21 the order entered in the bankruptcy that prevents 22 them from operating the hospital, so they can move to 23 amend that. However, we are also taking actions in 24 the bankruptcy to do away with that. And if we are</p>

<p style="text-align: right;">Page 14</p> <p>1 successful -- this is -- to take this a few points 2 down the line. Let's say we're successful in the 3 bankruptcy. The trustee who is holding the 4 Pipeline-Westlake assets who now is saying, okay, I 5 have to run the hospital, but we have no money 6 because we've been kind of set up that way, if there 7 is no contempt order saying SRC has got to pay, 8 nobody is going to pay and it's going to close. 9 THE COURT: Thank you. I'm going to turn to SRC 10 because I want to move it along. 11 MS. HEMERYCK: Okay. I'm going to let Mr. Weiss 12 address the bankruptcy issues in a few minutes. I 13 just want to flag a bunch -- a few things here. 14 One is, just to start, we don't think this 15 is an emergency. As you point out, Judge, that what 16 they're really seeking is that they're seeking 17 monetary sanctions. We believe that's actually the 18 only relief that the Court could possibly even enter. 19 We don't think the Court can enter that relief for a 20 lot of reasons, including that the contempt could not 21 be purgeable. We also don't think that. Judge 22 Loftus' order goes so far as to allow the Court to 23 force SRC to actually input more money. That's 24 essentially basically saying -- allowing a government</p>	<p style="text-align: right;">Page 16</p> <p>1 review proceeding, administrative review proceeding 2 under the Illinois administrative review law. The 3 Illinois administrative review law is very clear. In 4 order for that proceeding to happen, for this 5 proceeding to happen, every party who is a party to 6 the underlying proceeding must be made a defendant in 7 the case. The bankrupt entity here, the debtor, was 8 an entity to the underlying proceeding; therefore, 9 this cannot proceed without them. As long as the 10 automatic stay is in place, this cannot proceed. So 11 that's -- and we think that trumps everything. So 12 there is that issue as well. 13 Again, before we get to the bankruptcy 14 issues, I also wanted to point out -- you heard a lot 15 from Mr. Wade-Scott about how SRC is bound by the 16 order. What you really didn't hear is how SRC has 17 supposedly violated the order. That's the key issue 18 here. SRC hasn't taken actions with respect to the 19 hospital. That's being done by the trustee in 20 bankruptcy. SRC has no control over that trustee, I 21 believe Mr. Weiss will confirm. And so really what 22 their position boils down to is SRC violated the 23 order by authorizing the debtor to file bankruptcy. 24 That cannot possibly be a violation. I mean, I don't</p>
<p style="text-align: right;">Page 15</p> <p>1 entity to come in and say -- force another -- a 2 private entity to keep funding and losing venture. 3 We don't think it allows that. But even putting that 4 aside, since the only relief that really is even 5 conceivable here is monetary sanctions, and as you 6 point out, that's not going to have any impact on the 7 hospital, there is no emergency here. So I would 8 start with that. There is absolutely no emergency 9 here. 10 Second thing, we do not believe that this 11 Court has the ability to take any action in this case 12 with respect to SRC or any other entity. We just 13 filed this this morning, your Honor, and it's 14 obviously not before you, but I'm going to give you a 15 copy. 16 MR. WADE-SCOTT: We also have not seen this, your 17 Honor. 18 MS. HEMERYCK: Well, you actually got it by 19 e-filing, but we also will give you copies. And, 20 again, because we don't believe there is an emergency 21 here, we did not notice this as an emergency motion. 22 If the Court decides to -- that there is an 23 emergency, we will renote this as an emergency 24 motion. But essentially our position is, this is a</p>	<p style="text-align: right;">Page 17</p> <p>1 think there is any law that says -- in fact there is 2 law to the contrary that says the state court cannot 3 enjoin someone from exercising their federal right to 4 file for bankruptcy. So that's one. 5 The other one is essentially a you didn't do 6 something, not that you did something, that you 7 didn't do something. You didn't give enough money to 8 the hospital for it to keep going. And, again, I 9 don't think that Judge Loftus' order goes anywhere 10 near that far, and I don't think that this Court can 11 hold a party in contempt for not continuing to throw 12 money at this venture. 13 Let's see. What else. I think at this 14 point that's probably my main points. 15 Mr. Weiss, did you want to address the 16 bankruptcy issues? 17 MR. WEISS: Yes, if you don't mind. We have not 18 yet filed our appearance, myself and Mr. Darke, but 19 we are here on behalf of SRC as well just to address 20 the bankruptcy-related issues. 21 THE COURT: Is there any objection to counsel 22 addressing the Court? 23 MR. WADE-SCOTT: We do object to this, your 24 Honor. It's not hard to file an appearance, your</p>

<p style="text-align: right;">Page 18</p> <p>1 Honor, and the fact that they didn't do it is 2 somewhat frustrating. 3 THE COURT: Hang on. I heard the objections. 4 MR. WADE-SCOTT: Yes. 5 THE COURT: Your response. 6 MR. WEISS: I have an appearance here in hand, 7 your Honor, which I'll be happy to file instant and 8 hand a copy to counsel. 9 THE COURT: And do you stand on your objection? 10 MR. WADE-SCOTT: We do, Judge. 11 THE COURT: So let me address it this way. At 12 least at the moment I'm satisfied with the response 13 that I have heard so far from SRC. In other words, I 14 do not have a question right now that I would think 15 would implicate your expertise from what I'm 16 gathering, which is the bankruptcy aspect here. If I 17 think it necessary, I'll reconsider that position and 18 invite you to address the Court. At this point I'm 19 going to defer on that. 20 MR. WADE-SCOTT: Your Honor, if I could respond 21 briefly. 22 THE COURT: I would like you to respond, yes. 23 MR. WADE-SCOTT: If you had a question as well, 24 your Honor, I didn't want to --</p>	<p style="text-align: right;">Page 20</p> <p>1 this court order that they are bound by. 2 SRC does have to take actions to avoid 3 violating the order. That's the whole point of the 4 order. Again, I'm not sure that I'm tracking. If 5 your Honor has a question about that, I would be 6 happy to respond. But I want to add very quickly, to 7 the extent that this is a question about the 8 automatic stay and whether or not -- SRC is not a 9 beneficiary to the automatic stay. I don't think 10 that's up for debate. And even if it were, the 11 police power exception allows these entities to go 12 forward. The stay does not apply for governmental 13 units that are enforcing police powers. I know we 14 have an ongoing debate about the standing here, but 15 it's the law of the case that we have the ability to 16 enforce or seek review of this action and that the 17 stay arises from seeking review. 18 THE COURT: Doesn't your -- doesn't the argument 19 that you just raise, if not indeed the motion -- the 20 petition that you filed, doesn't it really bring 21 front and center the issue of whether this issue is 22 an issue that I should be addressing versus the 23 bankruptcy court. You just said it, which is you may 24 have, and I'm not disagreeing with you, the right to</p>
<p style="text-align: right;">Page 19</p> <p>1 THE COURT: No, no, go right ahead. 2 MR. WADE-SCOTT: There is a lot that counsel just 3 raised, and I want to knock out not an emergency. 4 The issue in this case is an order that requires 5 Westlake to stay open. They're closing it right now. 6 It's hard for me to tell -- I honestly did not track 7 counsel's argument about how it's not an emergency 8 that the hospital is being closed. 9 MS. HEMERYCK: SRC is not closing the hospital. 10 THE COURT: Don't interrupt him, please. 11 MS. HEMERYCK: I apologize. 12 MR. WADE-SCOTT: So I was going to get to the 13 next point, which is SRC is not violating the order. 14 I think we all agree SRC is bound by the order. The 15 question is what does SRC have to do to avoid 16 violating it. 17 If SRC has no obligation to do anything to 18 keep it open, it's just a restraint on SRC's agents 19 going and putting locks on the hospital or whatever 20 an affirmative action in closing the hospital would 21 be, then the order has no force. Pipeline-Westlake 22 could have a dollar in its bank account and then 23 close up the day after Judge Loftus entered her stay 24 order and that would then allow SRC to get out of</p>	<p style="text-align: right;">Page 21</p> <p>1 do what you're doing. But the question is, because 2 the automatic stay is all encompassing, if you will, 3 as to the debtor -- and there are cases that stand 4 for the proposition that the automatic stay can 5 extend beyond the debtor. So if what you're 6 ultimately asking to do in this case would implicate 7 the debtor and the operations or lack of operations, 8 if you will, of the debtor, why isn't this a matter 9 first and foremost to be addressed by the bankruptcy 10 court and then the bankruptcy court could say we 11 don't see any issue with what is being sought through 12 this petition, and as far as the Court is concerned, 13 it is not violative of the automatic stay, or you 14 would ask for exemption, if you will, of the 15 automatic stay as it pertains to this petition. And 16 if the Court agreed with you, you would be right back 17 here going forward on your petition for rule to show 18 cause. That's my question. 19 MR. WADE-SCOTT: Absolutely. So two issues. The 20 first is only this Court currently has jurisdiction 21 over SRC Hospital Investments II. They're not a 22 party to the bankruptcy. I can't go there and say 23 SRC has to pay. And SRC is not violating any order 24 of the bankruptcy court. They're violating an order</p>

<p style="text-align: right;">Page 22</p> <p>1 of this Court. And by filing the bankruptcy and 2 failing to operate the hospital and closing the 3 hospital, they are violating an order of this Court, 4 and I can only be heard here.</p> <p>5 To the last point, the bankruptcy, the stay, 6 of course, affects the debtor and the assets the 7 debtor has. However, what we're trying to do, if 8 anything, is bring assets into the estate. We're 9 saying somebody has to pour money in. I don't think 10 that any court has found that violates the automatic 11 stay. Even if it did, this Court has the ability to 12 interpret the automatic stay. That is not saying it 13 has to go before the bankruptcy court. And the 14 reason that we're here is the first two reasons I 15 stated. SRC is only here, and it's this Court's 16 order that SRC is violating.</p> <p>17 THE COURT: But to your point, the -- I will say 18 it somewhat inartfully -- the funding, which is what 19 you're seeking, among other things, by SRC implicates 20 Westlake itself, because what you're basically saying 21 is we want SRC to have to continue to fund or fund, 22 however you want to phrase it, Westlake, which in 23 effect would be saying to Westlake you must continue 24 as a going concern because you now have money to</p>	<p style="text-align: right;">Page 24</p> <p>1 conclusion we can get out of this by bankrupting 2 Pipeline-Westlake. Now, they can dismiss the 3 bankruptcy and then -- sorry. The first day of 4 relief that they got in the bankruptcy court, the 5 automatic stay goes into effect and the hospital is 6 to discharge and what have you. That's all they're 7 doing. So they drafted the order. It is -- we had 8 four hours of notice to get there. So it's kind of a 9 neat trick if you accept our view of the world, and 10 your Honor will or will not, but if you accept our 11 view of the world, it's a pretty neat trick. And so 12 this Court has jurisdiction of SRC to say not only 13 fund but you can get out of this, you can dismiss 14 that bankruptcy, you can modify the order that 15 doesn't allow you to accept funding. So that's thing 16 one.</p> <p>17 SRC is in charge. This Court can tell SRC, 18 you're in contempt of the order, figure it out, 19 because they will figure it out. They will dismiss 20 or amend the order and they will fund if they're in 21 contempt of this Court.</p> <p>22 THE COURT: Hang on. When you say figure it 23 out -- and I'm not trying to be hypertechnical, but a 24 contempt proceeding is a very serious proceeding --</p>
<p style="text-align: right;">Page 23</p> <p>1 continue, but Westlake is saying we don't want to 2 continue because we can't.</p> <p>3 So indirectly what you're asking this Court 4 to do is to say through enforcing the -- or, excuse 5 me, granting the petition is to say Westlake has to 6 stay open and it has to stay open via SRC funding it, 7 notwithstanding the fact that Westlake has filed a 8 Chapter 7 bankruptcy. So in effect you're saying 9 never mind the bankruptcy, you must stay open. I'm 10 having a hard time with that. How do I 11 conceptually -- that's why I asked the question about 12 the purge. If I agree with you and your petition 13 this morning and the order of contempt is actually 14 issued today, you said you didn't want to -- or maybe 15 I paraphrased it and said I didn't need you to give 16 SRC the game plan. But to purge itself of the 17 contempt, wouldn't SRC have to turn around and then 18 fund Westlake, which would directly affect the 19 bankruptcy proceeding. What am I missing there?</p> <p>20 MR. WADE-SCOTT: Sure. Two points. One is that 21 SRC has other options besides just funding. They -- 22 to take one step back, SRC has driven this entire 23 thing. So SRC saw the Court's order. SRC is in 24 charge of Pipeline-Westlake. And they made the</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. WADE-SCOTT: Of course, Judge.</p> <p>2 THE COURT: -- which means that the order itself 3 has to outline what it is that SRC must do. I cannot 4 say in a contempt order figure it out. The contempt 5 order has to say to SRC exactly what it is that it 6 must do to purge the contempt. Otherwise, the order 7 is void.</p> <p>8 MR. WADE-SCOTT: Understood.</p> <p>9 THE COURT: So my question is, what is the order 10 going to say specifically. SRC is in violation of 11 Judge Loftus' order that says blank, and to purge the 12 contempt, it must do what.</p> <p>13 MR. WADE-SCOTT: Understood, your Honor. SRC 14 would have to fund Westlake.</p> <p>15 MR. CASTIGLIONE: Yeah.</p> <p>16 MR. WADE-SCOTT: Go ahead.</p> <p>17 MR. CASTIGLIONE: Your Honor, may I jump in 18 on your question?</p> <p>19 THE COURT: Very briefly.</p> <p>20 MR. CASTIGLIONE: I think what they have to do is 21 finance the continued operation of the hospital. And 22 I just say, this is the business that the two 23 entities, SRC II and Pipeline-Westlake, have chosen 24 to go into, to run a hospital. If they're running a</p>

<p style="text-align: right;">Page 26</p> <p>1 restaurant, they can just shut it. Nobody would be 2 in court. It's a highly regulated industry. You 3 just can't shut hospitals down. Commonwealth Edison 4 couldn't just go out of business. I know they're not 5 a utility, but my point is, they couldn't just shut 6 the hospital down. And they are the ones, the 7 defendants here, who chose the corporate structure 8 they have, SRC II as the funding mechanism and 9 Pipeline-Westlake running the hospital. And they're 10 trying to really use that corporate structure to sort 11 of elude the regulation of the state, which is why 12 we're here in the first place, the People, to enforce 13 the planning act. And that's the basic problem here. 14 It seems to me that Judge Loftus' order says continue 15 to run this hospital until we can have a hearing or 16 some parties can be at issue on the issue of whether 17 the proceedings before the Board were proper, which 18 we allege they were not. And this is a mechanism 19 using just the corporate structure and filing of 20 bankruptcy by one of the entities before Judge Loftus 21 but not the other to get around it. 22 I think Melrose Park's points are well 23 taken. In a sense, while contempt is a very serious 24 proceeding and you need to order something, I think</p>	<p style="text-align: right;">Page 28</p> <p>1 automatic stay. I mean, everything they are asking 2 the Court to do, everything they are saying SRC could 3 do would be in violation of the bankruptcy, the 4 bankruptcy stay and the bankruptcy proceeding. 5 A couple other things just to flesh out 6 here. SRC is not in charge of the hospital. The 7 debtor entity is being run by the trustee, and the 8 debtor entity, as I understand it, and Mr. Weiss can 9 address, is still in charge of the hospital. SRC 10 does not run the debtor entity anymore. The trustee 11 runs it. Also, SRC is not the funding mechanism for 12 the debtor entity, never was, or for the hospital. 13 In fact, my understanding is SRC doesn't actually 14 have any money. It's essentially a managing company. 15 THE COURT: Let me just interrupt you. But I 16 think that's to the point that counsel raised 17 earlier -- early in the recitation of his argument 18 was that -- I'll phrase it this way -- it's rather 19 late in the day for SRC to take the position now with 20 what you just said when you've been subject to that 21 order, are subject to the order, and the order does 22 talk about funding. So I guess the point is, if at 23 some point SRC didn't agree with the way in which it 24 was being characterized in these proceedings, it</p>
<p style="text-align: right;">Page 27</p> <p>1 the something is very specific. It's finance the 2 operation of the hospital. 3 THE COURT: Okay. And just to be clear, it is 4 not as though I am not understanding the argument 5 that -- 6 MR. WADE-SCOTT: I understand that, Judge. 7 THE COURT: -- you are advancing. I understand 8 fully exactly, at least from your perspective, what 9 is going on here. So I don't want you to assume or 10 take from my questioning that I fail to grasp exactly 11 what you believe is happening. I fully understand 12 what you believe is happening. That's not the issue 13 I'm raising, though. 14 MR. WADE-SCOTT: Understood, your Honor. 15 THE COURT: So I need to address -- turn it now 16 back to SRC, and I need to wrap this up. 17 MS. HEMERYCK: Yes. Just a few things, your 18 Honor, and then I do think Mr. Weiss may have 19 something helpful to say. 20 So a few things. First of all, everything 21 I'm hearing from counsel here is all about the 22 bankruptcy. And your Honor is absolutely right, 23 they're talking about interfering with the orderly 24 functioning of the bankruptcy proceeding and with the</p>	<p style="text-align: right;">Page 29</p> <p>1 seems to me that at some point in time there would 2 have been a motion to clarify, if not amend, the 3 order of Judge Loftus talking about what obligations 4 SRC had. In other words, if SRC was taking the 5 position that SRC itself has no obligation, then why 6 would SRC allow itself to have been included in the 7 order in the first place. 8 MS. HEMERYCK: I don't believe that's our 9 position, your Honor, and that's not SRC's position. 10 I mean, SRC obviously could not take actions to close 11 the hospital, for example, in violation of the order. 12 But it hasn't done that. And I don't believe that 13 there is anything in the order that says SRC is 14 required to put in a certain amount of money per 15 month or anything like that. And the fact is SRC, 16 again, is not a funding mechanism. It was a party to 17 the proceeding. And Judge Loftus wrote the order the 18 way she did. We appealed the entire order frankly. 19 We think the whole order is completely invalid. But 20 as I started out, this really is about the 21 bankruptcy. 22 And the other thing I would point out is, 23 with respect to the police power argument, I mean, 24 the Village itself recognized in its papers that it</p>

<p style="text-align: right;">Page 30</p> <p>1 needs to go to the bankruptcy court if it wants to 2 have the bankruptcy court -- well, that's in your 3 footnote, Mr. Wade-Scott -- if they want the 4 bankruptcy court to interpret and lift the automatic 5 stay based on the police power. 6 MR. WADE-SCOTT: That's not a lift. Sorry, 7 Judge. 8 THE COURT: Hang on. 9 MS. HEMERYCK: In any event, your Honor, their 10 own papers say they're not asking this Court to do 11 that, they didn't ask for that relief, and that 12 they -- and they're going to ask the bankruptcy court 13 for it. And I think they've actually done that. 14 Haven't they filed something, Mr. Weiss, 15 with the bankruptcy court? 16 MR. WEISS: (Inaudible to the reporter.) 17 THE REPORTER: I'm sorry. I can't hear you. 18 THE COURT: So here is my question, back to SRC 19 then, is -- your position at bottom is that the -- 20 what is being sought here by the petitioner is 21 something that should not be before this Court if at 22 all but should be before the bankruptcy court -- 23 MS. HEMERYCK: Correct. 24 THE COURT: -- first and foremost.</p>	<p style="text-align: right;">Page 32</p> <p>1 which will, I believe, jeopardize the hospital's 2 license. The restarting process of a hospital, once 3 you've -- this is what we've been doing all long. 4 They kind of get it almost to closure and they get it 5 right back to operations because you can't restart 6 these things. A ton of damage has been done already 7 with doctors moving their patients to other 8 hospitals. 9 THE COURT: Sure. 10 MR. WADE-SCOTT: But I think that -- and I do not 11 want to commit to this position in the event that we 12 get there, but my fear, my well-grounded fear is that 13 if they get all the patients out of the hospital, 14 there are no more doctors treating patients there 15 that it will be irreversible, that we will not be 16 able to say restart it on Tuesday. And I would be 17 interested to hear defendant's position on that. I 18 think that they think the same thing. That's why 19 we're kind of barreling toward the end of the day. 20 THE COURT: Let me ask the question. That's fair 21 enough. I asked you, so I'll ask SRC. 22 MS. HEMERYCK: I don't believe SRC has a position 23 on it because this is in the hands of the bankruptcy 24 trustee. SRC is not in charge of the hospital. It's</p>
<p style="text-align: right;">Page 31</p> <p>1 MS. HEMERYCK: This action should be stayed. 2 THE COURT: Right. So let me ask a question. I 3 think I know the answer, but I'll ask the question in 4 any event. Back to plaintiff now for a second. 5 MR. WADE-SCOTT: Yes, Judge. 6 THE COURT: From your perspective, as you said 7 earlier, patients are being transferred. You don't 8 know how many, if any, are still left in the 9 hospital. So from a practical point of view, what 10 would be the effect of entering and continuing this 11 matter to a date after August I believe it's 13 where 12 this matter is next up before the bankruptcy court? 13 So my question is very limited. Without kicking the 14 can -- 15 MR. WADE-SCOTT: I hear you, Judge. 16 THE COURT: -- my question is, now you're before 17 the bankruptcy court, you address whatever you wish 18 to address, if any, and then you come back here and I 19 or Judge Loftus addresses this motion. 20 So my question to you is, what is the 21 disadvantage or what is the adverse consequence of 22 that suggestion? 23 MR. WADE-SCOTT: The trouble is that they will 24 effectuate the closure of the hospital completely,</p>	<p style="text-align: right;">Page 33</p> <p>1 not in charge of the bankruptcy trustee. It's not in 2 charge of the debtor. It's not taking actions with 3 respect to the hospital. Whatever is going on at the 4 hospital, that's in the hands of the debtor. 5 THE COURT: So from the plaintiff's point of 6 view, is it your understanding -- I'm not sure 7 whether it be the state's attorney or who could 8 answer the question -- but is it your position that 9 the -- once there literally isn't a patient left in 10 the hospital that that will be an irreversible 11 condition or situation and, therefore, no matter what 12 were to happen Monday or Tuesday it wouldn't matter, 13 that it couldn't be reopened, that it could not be -- 14 yeah, I'll leave it at that, reopened. 15 MR. WADE-SCOTT: I know that it would be a 16 tremendously bigger lift. I honestly do not know if 17 it is reversible. It has been the position of the 18 parties I think throughout this litigation that if 19 the hospital is actually closed the license for the 20 hospital is seriously in jeopardy. I don't know what 21 the mechanism is for that, if the licensing body 22 strips it immediately or if they do an investigation 23 or something like that. I can't stand before the 24 Court and say that I know. But it is for all</p>

<p style="text-align: right;">Page 34</p> <p>1 practical purposes irreversible. To take some 2 examples, shutting down the boiler. They're going to 3 drain the boiler and it's going to be an empty husk 4 of a building. So they'd have to spend a tremendous 5 amount of money restarting at the very least and they 6 will, I imagine, claim that it is impossible. 7 So for that reason we are here today to try 8 to keep the hospital skating along until they're 9 willing to fund and operate it correctly. 10 MR. CASTIGLIONE: Your Honor -- I'm sorry, 11 Sondra. 12 MS. HEMERYCK: I do think that you should hear 13 from Mr. Weiss, the bankruptcy expert here, because 14 what he's telling me is that this Court cannot order 15 the hospital to stay open. Is that correct? 16 THE COURT: Well, hang on. Let me go back, 17 though. That goes back to what is before this Court 18 this morning. There is nothing before this Court 19 from my perspective that says we want you to enter an 20 order saying that the hospital must stay open. 21 That's not the petition. The petition before the 22 Court is a petition that says that SRC has violated a 23 court order and that as a consequence of violating 24 that court order this Court should enter a monetary</p>	<p style="text-align: right;">Page 36</p> <p>1 enforce the planning act. This is a hospital that's 2 serviced that community for many years. We're 3 concerned without the sanction today that that may 4 cease to occur so -- 5 THE COURT: But isn't there a disconnect with 6 what you just said and what you ultimately want? If 7 the defendant chooses -- excuse me -- if SRC chooses 8 to say we're going to roll the dice, the judge found 9 us in contempt, and we're just going to continue to 10 pay the fine. In other words, that's what we're 11 going to do. We've made a business decision that 12 we're going to pay the fine. How does that address 13 the issue that you are driving, which is the lack of 14 health care in the community at that facility? 15 MR. CASTIGLIONE: I think that might be the best, 16 on behalf of the People, we can get in terms of a 17 remedy right now. 18 THE COURT: But it doesn't align with what you 19 want. 20 MR. CASTIGLIONE: Well, I mean -- I know, but it 21 might be the best we're able to get in terms of a 22 remedy right now. I go back to what counsel for 23 Melrose Park said, that in the face of that sanction, 24 one possible or perhaps likely outcome is that the</p>
<p style="text-align: right;">Page 35</p> <p>1 sanction against SRC. That's what I'm reading. 2 MR. WADE-SCOTT: That's correct, Judge. 3 THE COURT: So my point is, at no point today 4 would I be saying anything different than what I just 5 said. The relief is limited to that which is being 6 requested in the petition. 7 MR. WADE-SCOTT: That's correct, your Honor. 8 THE COURT: So we're not talking about -- it's 9 not being asked and I'm not deciding whether it can 10 be or should remain open. The issue this morning is 11 do I have the authority to proceed to consider the 12 petition to rule -- the petition for rule to show 13 cause in light of the fact that Westlake -- 14 Pipeline-Westlake has filed a Chapter 7 bankruptcy. 15 That's really it. 16 MR. CASTIGLIONE: Your Honor, may I for the 17 record. 18 THE COURT: Yes. 19 MR. CASTIGLIONE: The People share Melrose Park's 20 concern that without the monetary sanction it's very 21 possible the hospital may close, and we're 22 particularly concerned about the impact it would have 23 on health care in that area of the county. So, 24 again, that's one of the reasons we're here to</p>	<p style="text-align: right;">Page 37</p> <p>1 hospital will continue. I don't want to put words in 2 his mouth, but I think that's where Melrose Park is 3 coming from, and that makes sense to me. 4 MS. STEIN: Your Honor, and I might add, it's a 5 policy consideration for the People. On behalf of 6 the State's Attorney, it's our obligation to be 7 concerned about the community. So it goes beyond 8 this particular case. It has an impact on future 9 cases. And from our perspective, what has occurred 10 in this case we don't agree with. We think it is 11 wrong. And under those circumstances it's 12 sanctionable behavior. That is from a policy 13 standpoint having a greater impact on the community 14 in the future, so not necessarily as it relates to 15 this case. But to the extent that certain entities 16 can structure organizations in such a way that they 17 can get away with this, this sets a bad precedent. 18 So we are here to point out that if it is in fact -- 19 your Honor holds that they are in violation of the 20 May 7th order, they should be sanctioned. They 21 should be held in contempt of court regardless of 22 what the ultimate outcome is. So from our 23 perspective, we believe that the rule, the law should 24 be complied with regardless of what we ultimately</p>

<p style="text-align: right;">Page 38</p> <p>1 wish to achieve.</p> <p>2 THE COURT: As a follow-up to that, I could</p> <p>3 accomplish that same goal next week or the week after</p> <p>4 that. In other words, they violated a court order,</p> <p>5 and I'm going to enter a sanction for the violation</p> <p>6 of that court order. And the sanction as suggested</p> <p>7 in the motion was the sum that is being requested.</p> <p>8 So if you're saying that you would like to send a</p> <p>9 message, which is what I'm hearing, that you want to</p> <p>10 send a message going forward, that's fine, but the</p> <p>11 message would be that there is going to be a</p> <p>12 financial penalty to be paid for engaging in this</p> <p>13 kind of behavior, but it's not going to lead to what</p> <p>14 eventually it is that you want to happen here, which</p> <p>15 is to continue to have the doors of Westlake open.</p> <p>16 As I said a moment ago, that's not what this petition</p> <p>17 asks to do, so that's not the order that I'm entering</p> <p>18 today in any event.</p> <p>19 MS. STEIN: I understand that. But our position</p> <p>20 would be it for sure reduces the likelihood of the</p> <p>21 hospital remaining open, so there is an option that</p> <p>22 gets eliminated if action is not taken today.</p> <p>23 MR. WADE-SCOTT: Your Honor, can I ask --</p> <p>24 THE COURT: Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. WEISS: Thank you. Your Honor, counsel</p> <p>2 evidences a fundamental misunderstanding of Chapter 7</p> <p>3 of the Bankruptcy Code and confuses it with Chapter</p> <p>4 11 of the Bankruptcy Code. In Chapter 11 a debtor is</p> <p>5 in possession of its assets and in control of its</p> <p>6 affairs. Your Honor is familiar with this. In</p> <p>7 Chapter 7 a trustee is appointed. The trustee</p> <p>8 succeeds to all of those rights and responsibilities.</p> <p>9 And, in fact, Section 362(a)(3) of the Bankruptcy</p> <p>10 Code says that when a petition is filed it operates</p> <p>11 as a stay, applicable to all entities, of any act to</p> <p>12 exercise control over property of the estate, all</p> <p>13 entities, including SRC.</p> <p>14 There are procedural mechanisms for filing a</p> <p>15 motion to dismiss a bankruptcy case that do not even</p> <p>16 exist in Chapter 7 of the Bankruptcy Code except by</p> <p>17 virtue of the debtor's voluntary act and is subject</p> <p>18 to notice and an opportunity for objection.</p> <p>19 We can't do anything. We can't tell the</p> <p>20 trustee to stay open. We can't tell the trustee to</p> <p>21 ask us for money. We can't tell the trustee to move</p> <p>22 to dismiss the case. We can't do anything. The stay</p> <p>23 operates, applicable to all entities, including the</p> <p>24 line that the Village has crossed today in asking</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. WADE-SCOTT: It appears that SRC has taken</p> <p>2 the position that it could not stop the hospital from</p> <p>3 closing today if it wanted to. I think that that is</p> <p>4 not true. And I don't -- SRC is directly in charge</p> <p>5 of Pipeline-Westlake, which is the debtor.</p> <p>6 MS. HEMERYCK: No, we're not.</p> <p>7 THE COURT: Do not interrupt counsel, please. I</p> <p>8 don't want to say that again.</p> <p>9 MS. HEMERYCK: I apologize, your Honor.</p> <p>10 MR. WADE-SCOTT: I'll leave it at that, Judge.</p> <p>11 We think that SRC Hospital Investments II could</p> <p>12 prevent the hospital from closing down today. It</p> <p>13 cannot be possible they can direct their subsidiary</p> <p>14 to file bankruptcy and then divest themselves of any</p> <p>15 power to stop what's happening. I think they can</p> <p>16 file an emergency motion in the bankruptcy today to</p> <p>17 stop that from happening.</p> <p>18 MS. HEMERYCK: Can we hear from the bankruptcy</p> <p>19 expert on that?</p> <p>20 THE COURT: Can I hear from them?</p> <p>21 MR. WADE-SCOTT: I'm not trying to prevent your</p> <p>22 Honor from having information, so we'll withdraw our</p> <p>23 objection to that appearance.</p> <p>24 THE COURT: Counsel.</p>	<p style="text-align: right;">Page 41</p> <p>1 your Honor for the relief that's been argued here in</p> <p>2 court.</p> <p>3 The stay has been violated. The bankruptcy</p> <p>4 stay has been violated. We can't do anything. And,</p> <p>5 your Honor, I don't ever like to tell the judge what</p> <p>6 they can and can't do, but there is case law to the</p> <p>7 effect that any order entered by another court in</p> <p>8 violation of Section 362(a)(1) of the Bankruptcy</p> <p>9 Code, which also operates as a stay, as to the</p> <p>10 continuation of a judicial proceeding against the</p> <p>11 debtor in bankruptcy. Any order entered in</p> <p>12 contravention of 362(a)(1) is void ab initio.</p> <p>13 Nothing can happen today to keep the</p> <p>14 hospital open, and I don't mean that to sound like</p> <p>15 we're trying to get away with anything. It wasn't</p> <p>16 our decision to close the hospital. We filed -- we,</p> <p>17 being SRC, authorized the debtor to file a bankruptcy</p> <p>18 petition. There is no argument that we were allowed</p> <p>19 to do that because of the supremacy clause.</p> <p>20 Having filed the petition, SRC authorized</p> <p>21 Pipeline-Westlake to go a step further, which no</p> <p>22 debtor does in Chapter 7, and filed its own motion</p> <p>23 with the bankruptcy court asking the Court to give</p> <p>24 the trustee permission to continue to operate the</p>

<p style="text-align: right;">Page 42</p> <p>1 hospital. It's in paragraphs 31 and 34 of the motion 2 that was attached to the petition. And we said to 3 the bankruptcy court give the trustee the property, 4 authorize him to operate it for patient safety and 5 employee payment, and then let the trustee decide 6 what to do. The trustee went to court. The trustee 7 got an order from the bankruptcy court. I'm sorry, 8 that's wrong. The order that the bankruptcy court 9 entered in response to that motion was to authorize 10 the trustee and direct the trustee to transfer the 11 patients out. The bankruptcy court ordered that. 12 The trustee is doing that. We can't stop him from 13 doing that. If the order from today would be that 14 SRC is obligated to fund, I don't know what we would 15 fund. Without us going the step further that's 16 implied in every argument that's been made and 17 telling us to fund with an instruction to stay open, 18 no relief can be entered here that would help. 19 THE COURT: Okay. Thank you. 20 MR. WADE-SCOTT: Your Honor, we have -- to the 21 extent you have more questions of the bankruptcy from 22 plaintiff's position, we actually have bankruptcy 23 counsel here, but he was obviously not prepared to 24 present before the Court today. What we did not hear</p>	<p style="text-align: right;">Page 44</p> <p>1 different story, I think, before your Honor. And 2 saying today they can do nothing just isn't true. 3 They could go into bankruptcy court and say we are in 4 violation of Judge Loftus' order, we need to file an 5 emergency motion to convert this case to a Chapter 6 11, we need to continue to operate. So cases get 7 converted all the time. And so for them to say no, 8 we're washing our hands of it and you can't prohibit 9 us from filing, but they directed the filing of the 7 10 in Delaware in order to prohibit us from getting in 11 court in time and maybe moving to dismiss, which is 12 what we actually did. I believe she said we moved 13 for relief from stay. We actually moved for the 14 emergency dismissal of the case saying this is a 15 state court issue, this is something for this court 16 here in Illinois to handle. 17 THE COURT: Thank you. I'm going to take five 18 minutes and come back out and give you my ruling. 19 (Recess was taken.) 20 THE COURT: The Court, having considered the 21 arguments of counsel in support of and in opposition 22 to the emergency petition, plaintiff's emergency 23 petition for rule to show cause, is prepared to rule 24 on the petition. The genesis of the proceedings</p>
<p style="text-align: right;">Page 43</p> <p>1 there -- we're assuming that the automatic stay 2 applies and that we would need to apply in the 3 bankruptcy court to lift the stay pursuant to the 4 police power exception. Your Honor can read the 5 statute. That's not how it works. The stay does not 6 apply. 7 So if there is no stay that actually 8 applies, I don't understand the relevance of 9 counsel's last presentation on this. And it would be 10 the trustee that would have to say if -- accepting 11 their argument, it would be the trustee that would 12 have to say you're violating the automatic stay, I 13 don't want the money to operate the hospital. And 14 Kevin -- 15 THE COURT: Anything else? 16 MR. MORSE: Your Honor, yes. Kevin Morse on 17 behalf of the Village. 18 Your Honor, I think an important thing that 19 counsel over there noted is that SRC directed the 20 filing of the bankruptcy petition. What they 21 directed was the filing of a Chapter 7 bankruptcy 22 petition to close the doors, to cease operations. 23 They could have authorized a filing of a Chapter 11 24 to continue operations, and then this would be a very</p>	<p style="text-align: right;">Page 45</p> <p>1 today emanate from an order that was entered on 2 May 7th of 2019. The order entered on 3 May 7th of 2019 provided, among other things, that 4 Defendant Pipeline-Westlake Hospital, LLC, and 5 Defendant SRC Hospital Investments II, LLC, and any 6 of their employees or agents are enjoined from taking 7 any action pursuant to the February 1st, 2019, 8 discontinuation application including, but not 9 limited to, closing Westlake Hospital. 10 Paragraph 2 of that order also provided that 11 defendants, including SRC, are enjoined from creating 12 conditions that change the status quo from April 30th 13 of 2019 including, but not limited to, A, 14 discontinuing any medical service offered by Westlake 15 Hospital on April 30, 2019, or modifying the scope of 16 those services. Such services shall include, but are 17 not limited to, emergency room, intensive care, 18 obstetrics, rehabilitation, internal medicine, 19 pediatrics, surgical, and psychiatric. In Subsection 20 B, terminating employees or contracts that result in 21 insufficient staffing to provide the scope of 22 services that were offered by Westlake on April 30th 23 of 2019. 24 As the parties have noted, Pipeline-Westlake</p>

<p style="text-align: right;">Page 46</p> <p>1 filed a Chapter 7 bankruptcy petition on August 6th 2 of 2019. The petition that is before the Court, 3 which is only against SRC, asserts that SRC by having 4 essentially authorized the filing of that petition by 5 Pipeline-Westlake is in violation of this Court's 6 May 7th order because the result of the filing of the 7 Chapter 7 is essentially the closure of Westlake 8 Hospital.</p> <p>9 The petition requests that the Court enter a 10 rule to show cause why SRC should not be held in 11 contempt and impose daily fines of at least 200,000 12 for violation of the Court's stay and hold SRC in 13 contempt of court and grant any other relief that the 14 Court may deem appropriate.</p> <p>15 As noted, the petition is a rule to show 16 cause, which in effect seeks to hold SRC to indirect 17 civil contempt. Generally civil contempt occurs when 18 a party fails to do something ordered by a court 19 resulting in the loss of a benefit or advantage to 20 the opposing party. Contempt that occurs outside the 21 presence of the trial court is characterized or 22 classified as indirect contempt. The existence of an 23 order of the trial court and proof of willful 24 disobedience of that order is essential to any</p>	<p style="text-align: right;">Page 48</p> <p>1 morning before the Court did in fact involve the 2 bankruptcy proceeding.</p> <p>3 The request that the petitioner/plaintiff 4 here is asking this Court to -- let me start again. 5 The contempt order that this Court would enter if it 6 agreed with the plaintiff from this Court's 7 perspective would be an order that would in fact 8 directly implicate the ongoing bankruptcy proceeding 9 and potentially a violation of the automatic stay.</p> <p>10 The reason I say that is, at bottom, in order to 11 purge itself of the contempt order that this Court 12 would order, SRC would essentially have to take 13 actions that are directly involved in the ongoing 14 bankruptcy proceeding.</p> <p>15 I am not ruling today that this Court does 16 not have authority to enforce the Court's own orders. 17 It is apparent that a court does have such authority. 18 The issue that this case raises, however, is the 19 ability of that order to -- how that order could 20 affect another proceeding. So from this Court's 21 perspective, that is an issue that needs to be 22 addressed by the bankruptcy court.</p> <p>23 In conclusion, I am not denying the petition 24 for rule to show cause. I am really just deferring</p>
<p style="text-align: right;">Page 47</p> <p>1 finding of any -- excuse me -- of indirect civil 2 contempt.</p> <p>3 The burden initially false on the petitioner 4 to prove by a preponderance of the evidence that the 5 alleged contemnor has violated a court order at which 6 point the burden shifts to the alleged contemnor to 7 show that noncompliance with the Court's order was 8 not willful or contumacious and that he or she had a 9 valid excuse for failure to follow the court order.</p> <p>10 Civil contempt proceedings are designed to 11 compel obedience to a court order. A valid contempt 12 order must contain a purge provision which lists the 13 sanction when the contemnor complies with the order. 14 A civil contempt order that fails to provide the 15 contemnor with the keys to the cell is void.</p> <p>16 The filing by Pipeline-Westlake of a Chapter 17 7 bankruptcy triggered what is known as the automatic 18 stay provision found in Section 362 of the Bankruptcy 19 Code. The result of the application, if you will, of 20 the automatic stay is to bring to a standstill any 21 actions that were proceeding against the debtor. In 22 this case SRC is not a party to the bankruptcy 23 proceeding, and SRC is obviously not the debtor, yet 24 much of the arguments raised and discussed this</p>	<p style="text-align: right;">Page 49</p> <p>1 this Court's consideration, if you will, of the 2 petition until such time in which this Court is 3 satisfied that proceeding with the petition would not 4 in effect constitute a violation of the automatic 5 stay. Therefore, the Court will enter and continue 6 the petition for rule to show cause for a date that I 7 will provide the parties momentarily. But before I 8 do that, I will invite the parties to approach and 9 they can address anything they wish with the Court at 10 that time.</p> <p>11 My understanding -- and again, you know 12 about the case more than I do -- is that there is an 13 interim proceeding on or about August 13th. That's 14 my understanding. This -- I can continue this matter 15 to August 14 at 10:30 if that date works for the 16 parties.</p> <p>17 MR. WADE-SCOTT: Your Honor, it does. I 18 appreciate that the Court is willing to set this over 19 for shortly after we are raising the issues in the 20 bankruptcy. A question and a suggestion to the Court 21 would be -- from the Village of Melrose Park would 22 be -- the petition before the Court today is a rule 23 to show cause that requires the Court to find that it 24 appears the defendant is in violation of the court</p>

<p style="text-align: right;">Page 50</p> <p>1 order and then they have to demonstrate that they're 2 in fact not. That burden has certainly been met, 3 that they are violating it. I hear your Honor loud 4 and clear. The purge question, your Honor has 5 decided, would prevent at this moment defendants from 6 being held in contempt. Is that correct? 7 THE COURT: That's essentially my position. 8 MR. WADE-SCOTT: For that reason then, your 9 Honor, we would suggest that the petition actually be 10 granted and the show cause hearing be set for Tuesday 11 afternoon or Wednesday. 12 THE COURT: Fair enough. Response. 13 MR. SAFER: Your Honor, that would be a holding 14 that the filing of a bankruptcy pursuant to the 15 Bankruptcy Code was contumacious. That would 16 implicate all sorts of constitutional issues, 17 including the supremacy clause, not the least of 18 them. That could not possibly -- and that is all 19 that they have proffered thus far. That cannot be 20 sufficient to meet their burden. And if it were, it 21 would be unconstitutional as applied. 22 THE COURT: Response. 23 MR. WADE-SCOTT: Your Honor, we're not relying 24 only on the fact that they have filed the bankruptcy.</p>	<p style="text-align: right;">Page 52</p> <p>1 Pipeline-Westlake that, therefore, caused it to file 2 bankruptcy. Right now they're directing money to 3 Pipeline-Westlake to continue to operate the 4 hospital. We have no idea how much money is out 5 there. If the entity had been sufficiently 6 capitalized, that too would not violate the order. 7 That's something we would get to at a show cause 8 hearing. That's why I'm focusing on the purpose of 9 this proceeding is to figure out -- You, defendant, 10 are bound by this order. This order is being 11 violated. You're welcome to explain why. But that 12 happens at a show cause hearing. 13 MS. HEMERYCK: The "is being violated," your 14 Honor, is pretty interesting phrasing. Again, there 15 is no showing SRC is violating the order. 16 THE COURT: Well, let me ask it this way to 17 counsel for SRC then. Do you disagree that SRC 18 changed the status quo vis-à-vis Westlake by 19 authorizing the filing of the Chapter 7 petition? 20 MR. WEISS: Your Honor, if I may, because it's in 21 the bankruptcy proceeding. Again, as I mentioned in 22 my earlier remarks, in filing the petition, we 23 specifically asked the bankruptcy court to authorize 24 the trustee to continue to operate the hospital.</p>
<p style="text-align: right;">Page 51</p> <p>1 The issue is that the order says you cannot close a 2 hospital. The hospital is being closed. We argued 3 at SRC's direction. That's enough for this Court to 4 find that the order has been violated. If they would 5 like to explain at the show cause hearing that in 6 fact they couldn't purge contempt, we understand 7 that. But the -- all the necessary predicates for 8 finding the order has been violated already exist. 9 The hospital is substantially closed. I'm certain 10 that by Tuesday it will be far more so. It is 11 perfectly reasonable for this Court to then turn to 12 defendants and say -- explain why you should not be 13 held in contempt, or defendant, SRC. 14 MS. HEMERYCK: And, your Honor, if we could 15 respond to that. Again, they have not shown that SRC 16 is closing the hospital. SRC is not closing the 17 hospital. 18 THE COURT: Is it your position that SRC through 19 authorizing the filing of the Chapter 7, that's where 20 SRC violated the court's order? Is that your 21 position? 22 MR. WADE-SCOTT: There is a number of other 23 things they could have done that violated the order; 24 for instance, not sufficiently funding</p>	<p style="text-align: right;">Page 53</p> <p>1 It's exactly the opposite. We may have filed a 2 bankruptcy petition because -- or SRC may have 3 authorized Pipeline-Westlake to file a bankruptcy 4 petition because it's broke, but we did not do 5 anything in violation of that order. And, your 6 Honor, I think if counsel is suggesting that the 7 burden has shifted because there is evidence in the 8 record that justifies the shifting of the burden, 9 that is clearly not the case, and I think your Honor 10 needs to go back to your original suggestion that if 11 we continue the whole thing we can start from the 12 proper beginning and put evidence on the record as to 13 whether or not the plaintiff's burden has been 14 satisfied. 15 THE COURT: Understood. You have the last word, 16 counsel for the plaintiff. 17 MR. WADE-SCOTT: I apologize, your Honor. I just 18 heard that Pipeline-Westlake moved the bankruptcy 19 court to continue operations of the hospital. If 20 that's the case, then we certainly have something for 21 SRC to do today, which is fund the hospital. But I 22 guess we can step off that. I'm very confused by 23 that, Judge. I don't know if you are. 24 THE COURT: Well, I think -- I've read the</p>

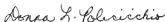
<p style="text-align: right;">Page 54</p> <p>1 petition, and what counsel has said is what's in the 2 petition, so I understand that -- I'll leave it at 3 that. What counsel just reflected is in fact what is 4 in the petition because then they authorized the 5 trustee to do certain things, meaning SRC, to be more 6 specific. 7 In any event, the question that I would have 8 then for counsel for the plaintiff is this. And 9 maybe -- and I appreciate you saying or not saying 10 it, but I will say it -- that maybe the Court put the 11 cart before the horse relative to this act this 12 morning. But there is a reason for that. And the 13 reason for that is going through an exercise that at 14 the end would yield the same result. And what I mean 15 by that is -- so yes, I started with the order, and I 16 started with the purge order because what I was 17 focused on was could I get you to where you wanted to 18 be in any event assuming you satisfied your burden. 19 That's why I started with that over an hour ago by 20 saying that, because why go through all of this to 21 then come back and say there is still a problem, at 22 least my concern, with respect to the purge aspect of 23 the contempt order. 24 I don't see the -- I understand the point.</p>	<p style="text-align: right;">Page 56</p> <p>1 yet another day and they're violating the order for 2 yet another day. 3 THE COURT: What about that. 4 MS. HEMERYCK: I don't know if we have a position 5 on that. I do want to raise one other issue, though, 6 before we finish. 7 MR. WEISS: Your Honor, obviously the Court can 8 construct next week's hearing however you like, but 9 there is a procedure to be followed in a contempt 10 proceeding. We can't go straight to sentencing 11 before trial. So if your Honor would like to set the 12 plaintiff's burden and then the defendant's burden 13 all for the same day, it's not our intent -- it 14 wasn't my intent to ask the Court to set the initial 15 stage for next week and then we'll ask for another 16 date for a final hearing. That was not our 17 intention. That's up to your Honor. 18 MS. HEMERYCK: The one thing I would add is, 19 there is still -- if the Court is going to hold this 20 hearing on the 14th, I think that does turn our 21 motion to stay this entire proceeding into an 22 emergency motion. I believe we need to have that 23 heard as well, because if we're correct, that the 24 debtor is a necessary party under the administrative</p>
<p style="text-align: right;">Page 55</p> <p>1 I don't see, however, the efficacy of essentially 2 bifurcating the proceedings in the sense of making a 3 finding that you satisfied as the petitioner your 4 burden or rule to show cause and then whether or not 5 then we come back on the 14th for the defendant -- 6 excuse me -- for SRC to show that it was not in 7 contempt. I think it's best to have all in one 8 proceeding, meaning whether it be on the 14th or 9 whenever, all at one time. 10 MR. WADE-SCOTT: Your Honor, our concern is 11 delay. The reason we would ask for the show cause 12 hearing to be set is that our motivation in this case 13 is to get the Court's order filed as soon as possible 14 if in fact it's possible. So the reason we're asking 15 for the show cause hearing to be set is to remove the 16 first step, which is to have the petition set over, 17 if your Honor ultimately agrees with plaintiff's 18 position, issues the rule to show cause that could be 19 the same hearing, if your Honor wishes to handle it 20 that way, in which case we would have no objection. 21 The only concern that we would have is we come in on 22 the 14th, we have made the necessary steps happen in 23 the bankruptcy in accordance with your Honor's 24 consideration on this, and then it gets set over for</p>	<p style="text-align: right;">Page 57</p> <p>1 review law and, therefore, this Court can't proceed 2 at all, that I think needs to be decided before we 3 have a further hearing on this issue. 4 THE COURT: All right. So I agree that in an 5 effort to try to expedite matters, as counsel for the 6 plaintiff is suggesting, that that would make -- it's 7 logical to proceed on the 14th, as well as counsel 8 for SRC, which is that we're proceeding forward on 9 the 14th on the rule to show cause, and the Court 10 anticipates that it will resolve that issue, meaning 11 the rule to show cause, as of August 14th. That 12 being said, the motion that was tendered this 13 morning, which counsel for the Village, I believe, 14 indicated that, whether it had been e-mailed to him 15 or not, he certainly had not yet seen it, and I 16 certainly have every reason to take him at his word. 17 If counsel for SRC is taking the position that is 18 really a threshold motion that needs to be decided 19 before we can even proceed to the rule to show cause, 20 then it would seem to me that that motion would need 21 to be addressed first on the 14th, and that gives 22 counsel for the Village an opportunity to review the 23 motion and just be prepared to address it. I don't 24 think that I will be the judge dealing with this</p>

<p style="text-align: right;">Page 58</p> <p>1 issue on the 14th, but it would seem to me that if 2 counsel for the Village wished to file a written 3 response, I know for me it's always helpful, so if 4 you could file a response to that -- you have a lot 5 of other things to do -- it would be helpful to the 6 Court, but you don't have to. Let me be clear, I'm 7 not requiring you to -- 8 MR. WADE-SCOTT: Yes. 9 THE COURT: -- I'm simply saying that a written 10 response in opposition to the motion would be 11 beneficial to Judge Loftus. 12 So from my perspective, that would be the 13 threshold issue to be addressed on the 14th. 14 Assuming that your motion, counsel for SRC, is 15 denied, and I'm not prejudging it, assuming that the 16 motion is denied, then you need to be prepared to 17 proceed for the hearing on the rule to show cause. 18 MS. HEMERYCK: Understood, your Honor. 19 THE COURT: Am I missing anything else? 20 MR. WADE-SCOTT: No, your Honor. So just to 21 clarify, the rule to show cause hearing will go 22 forward on Tuesday? 23 THE COURT: That is correct. 24 MR. WADE-SCOTT: We will need --</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. WADE-SCOTT: Correct, your Honor. 2 THE COURT: And I agree with that. 3 MS. HEMERYCK: Understood. 4 THE COURT: So there is no objection, no other 5 objection having been raised by SRC to the Village 6 presenting a witness as part of its rule to show 7 cause petition, correct? 8 MR. WADE-SCOTT: I apologize, your Honor. I 9 don't think we actually need to present a witness for 10 the petition portion. The defendant will need to 11 present a witness if it intends to get out of the 12 rule to show cause, and I do not want that rule to 13 show cause hearing to be continued because there is 14 nobody there. So I wanted to flag that issue. There 15 is a lot of moving pieces here, and it's all going to 16 go forward on Wednesday. I don't think there is any 17 objection from defense about it. 18 MS. HEMERYCK: All I can say is at this point we 19 don't have any idea what people's schedules are, for 20 the potential witnesses are. 21 THE COURT: All I will say is that -- I'm hoping 22 that I'm not speaking out of turn for the judge who 23 is hearing this -- is that, if possible, this 24 petition, assuming that it can proceed in light of</p>
<p style="text-align: right;">Page 59</p> <p>1 THE COURT: August 14th. 2 MR. WADE-SCOTT: I'm sorry, Judge, yes. Everyone 3 else understood it. 4 THE COURT: Tuesday is the other proceeding. 5 MR. WADE-SCOTT: Understood. We will in that 6 event need -- there will be at least one witness 7 presented, I assume, so I just wanted to flag that 8 for the rule to show cause hearing because the Court 9 will need to take evidence. So we'll do all the 10 appropriate procedures, but if there is any objection 11 to producing evidence on Wednesday, I think the Court 12 should hear them now. 13 MS. HEMERYCK: And that would only be if the 14 Court were to first deny our motion and then grant -- 15 MR. WADE-SCOTT: Of course. 16 MS. HEMERYCK: -- the petition and then have the 17 show cause hearing. Understood. 18 THE COURT: Yes. And what counsel is saying, 19 which is consistent with what I said earlier is, he 20 envisions if he prevails on your motion that assuming 21 that Westlake -- excuse me -- the Village of Melrose 22 Park prevails that they would have put on their 23 evidence and the burden would have shifted and an 24 actual decision on the rule would be issued.</p>	<p style="text-align: right;">Page 61</p> <p>1 whatever happens on the 13th, the Court will do its 2 best to endeavor to resolve this petition on the 3 14th. 4 MS. HEMERYCK: We understand. 5 THE COURT: So I want everyone to walk away with 6 that understanding. If things happen that -- but 7 that is the intent, that on the 14th there will be 8 resolution of the pending petition before the Court. 9 MS. HEMERYCK: We understand that. And, your 10 Honor, is it your understanding this will be heard in 11 front of Judge Loftus? 12 THE COURT: That is exactly my understanding. 13 MS. HEMERYCK: So we will then -- SRC, we will 14 reach out to her chambers to get our motion, I think, 15 on that. 16 THE COURT: That is correct, you would have to 17 reach out to her clerk regarding -- but what I'm 18 saying to you is the 14th is the date that was 19 provided to me for Judge Loftus at 10:30, so in 20 effect that is the date -- so your motion, I don't 21 think you really need to trouble the clerk with it 22 because your motion is really tethered to what is 23 proceeding right now. So your motion will be heard 24 first on the 14th at 10:30. The Village can file a</p>

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1 response, don't have to, but if you wish to, you can
 2 file a response in advance of that. I anticipate
 3 that that motion will be addressed first. If the
 4 motion is denied, then I presume that the petition
 5 will proceed. Anything else?
 6 MS. HEMERYCK: No, your Honor.
 7 MR. WEISS: Thank you very much.
 8 MS. HEMERYCK: Thank you, your Honor.
 9 MR. WADE-SCOTT: Thank you.
 10 THE COURT: You need to write up the order.
 11 MR. WADE-SCOTT: Yeah. We are drafting the order
 12 to say the petition to be heard on Wednesday with, if
 13 granted, a rule to show cause hearing immediately
 14 following.
 15 THE COURT: Okay. Thank you. Court is
 16 adjourned.
 17 (Off the record at 11:20 a.m.)
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 22
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1 STATE OF ILLINOIS)
) ss:
 2 COUNTY OF COOK)
 3 DONNA L. POLICICCHIO, being first duly
 4 sworn, deposes and says that she is a Certified
 5 Shorthand Reporter in Cook County, Illinois, and
 6 reporting proceedings in the Courts in said County;
 7 That she reported in shorthand and
 8 thereafter transcribed the foregoing proceedings;
 9 That the within and foregoing transcript
 10 is true, accurate and complete and contains all the
 11 evidence which was received in the proceedings had
 12 before the Honorable FRANKLIN U. VALDERRAMA upon the
 13 above-entitled cause.
 14
 15
 16 
 DONNA L. POLICICCHIO, C.S.R.
 17 License No. 084-003740
 Notary Public
 18
 19
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 21
 22
 23
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17 (Pages 62 - 63)