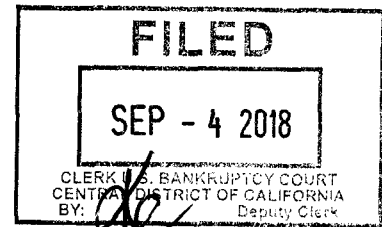


1 XAVIER BECERRA  
Attorney General of California  
2 JAMES M. TOMA  
Supervising Deputy Attorney General  
3 ALICIA BERRY (SBN 228367)  
Deputy Attorney General  
4 State Bar No. 228367  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6550  
6 Fax: (213) 897-7605  
E-mail: Alicia.Berry@doj.ca.gov  
7 Attorneys for Xavier Becerra  
California Attorney General



8  
9 IN THE UNITED STATES BANKRUPTCY COURT  
10 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

11 **In re:**  
12  
13 **VERITY HEALTH SYSTEMS OF**  
14 **CALIFORNIA, INC.,**  
15 Debtor.  
16  
17  
18  
19

CASE NO. 18-bk-20151-ER  
Chapter: 11  
**ATTORNEY GENERAL'S INITIAL LIMITED OBJECTION TO DEBTOR'S EMERGENCY FIRST DAY MOTIONS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**  
Hearing: September 5, 2018  
Time: 10:00 a.m.  
Courtroom: 1568  
Judge: Ernest M. Robles

20 Xavier Becerra, Attorney General of the State of California, (California  
21 Attorney General) submits this Limited Objection to three of Debtor's Emergency  
22 First Day Motions on the grounds that the relief sought violates the California  
23 Attorney General's authority to protect the public health, safety, and welfare of the  
24 people of California.<sup>1</sup> In July 2015, the California Attorney General issued a  
25 decision to consent to the change in governance and control of Daughters of Charity  
26 Health System (now known as Verity Health Systems of California, Inc.) pursuant

27 <sup>1</sup> By filing this Limited Objection, the State of California does not waive its  
28 immunity under the Eleventh Amendment of the United States Constitution.



1 to the terms of the System Restructuring and Support Agreement entered into by  
2 and between Daughters of Charity Ministry Services Corporation, Daughters of  
3 Charity Health System, Certain Funds Managed by BlueMountain Capital  
4 Management, LLC, a Delaware limited liability company, and Integrity Healthcare,  
5 LLC, a Delaware limited liability company. (The first 15 pages of the California  
6 Attorney General's Decision is attached as Exhibit A.) Because the emergency  
7 relief sought may violate several of these conditions and state charitable trust law,  
8 this Court's orders on these motions should require the Debtor to comply with the  
9 conditions and state charitable trust law.

### 10 ARGUMENT

#### 11 **A. California and Bankruptcy Laws That Protect Public Health and Safety**

12 Xavier Becerra is the duly elected Attorney General of the State of California  
13 and is the chief law officer of the State. (Cal. Const., art. V, § 13.) The California  
14 Attorney General has broad constitutional, common law and statutory powers under  
15 the state constitution to protect the public. (California Constitution, art. V, §13;  
16 *D'Amico v. Board of Medical Examiners* (1974)11 Cal.3d 1, 14-15.) The California  
17 Attorney General is charged with the supervision and regulation of nonprofit  
18 corporations and other charitable trusts in this state. (Cal. Govt. Code, § 12598.)

19 As part of the California Attorney General's supervisory and regulatory  
20 authority, any nonprofit corporation that is subject to the Nonprofit Public Benefit  
21 Corporation Law (Cal. Corp. Code, § 5110 *et seq.*) and operates or controls a health  
22 facility is required to provide written notice to, and to obtain the written consent of,  
23 the California Attorney General prior to entering into any agreement or transaction  
24 to sell a material amount of its assets to a for-profit corporation. (Cal. Corp. Code, §  
25 5914.) The California Attorney General can consent, conditionally consent, or  
26 deny the proposed transaction or agreement. (Cal. Corp. Code, §§ 5915, 5917.)

27 ///

28 ///

1 The United States Supreme Court has held that the Bankruptcy Code does  
2 not preempt “a state statute or regulation that is reasonably designed to protect the  
3 public health or safety. . .” (*Midlantic National Bank v. New Jersey Department of*  
4 *Environmental Protection* (1986) 474 U.S. 494, 507, 106 S.Ct. 755.) In enacting  
5 Corporations Code section 5914, the California Legislature made findings and  
6 declarations:

7 (c) Charitable, nonprofit health facilities have a substantial and beneficial  
8 effect on the provision of health care to the people of California,  
9 providing as part of their charitable mission uncompensated care to  
10 uninsured low-income families, and under-compensated care to the poor,  
11 elderly, and disabled. (d) Transfers of the assets of nonprofit, charitable  
12 health facilities to the for-profit sector, such as by sale, joint venture, or  
13 other sharing of assets, directly affect the charitable use of those assets  
14 and may affect the availability of community health care services. (Cal.  
15 Corp. Code, Ch. 9, Note, §1, Stats 1996 ch 1105.)

16 Here, the California Attorney General protected the health and safety of the  
17 communities served by the six health facilities owned and controlled by the Debtor  
18 by issuing conditions requiring essential health care services to be provided by the  
19 facilities including emergency services, minimum levels of charity care (free or  
20 discounted care), minimum levels of community benefits, participation in the  
21 Medicaid and Medicare programs, and seismic safety.

22 In addition, the Debtor is a nonprofit public benefit corporation that holds  
23 charitable gifts and assets that are restricted for a specific purpose.<sup>2</sup> Those  
24 restricted gifts and assets are not to be used for any other purposes than the  
25 restricted purpose and should not be available to creditors unless authorized in the  
26 restriction. California law determines whether restricted donations or property held  
27 in trust are property of the bankruptcy estate. (*See generally Barnhill v. Johnson*,  
28 503 U.S. 393, 398 (1991) *citing Butner v. U.S.*, 440 U.S. 48, 55 (1979); *Gaughan v.*

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<sup>2</sup> Several of the other debtors included in this jointly administered action are also nonprofit corporations and entities. Thus, all of their respective restricted charitable funds can only be used for the restricted purposes.

1 *Edward Dittlof Revocable Trust (In Re Costas)*, 555 F.3d. 790, 793 (9th Cir.  
2 2009).)

3 In California, “[T]he common element of all charitable purposes is that they  
4 are designed to accomplish objects which are beneficial to the community.” (See  
5 *People ex rel. Ellert v. Cogswell* (1896) 113 Cal. 129, 138.) “All the assets of a  
6 corporation organized solely for charitable purposes must be deemed to be  
7 impressed with a charitable trust by virtue of the express declaration of the  
8 corporation's purposes, and notwithstanding the absence of any February 12, 2010  
9 express declaration by those who contribute such assets as to the purpose for which  
10 the contributions are made.” (*Pacific Home v. County of Los Angeles* (1953) 41  
11 Cal.2d 844, 852; *In re Los Angeles County Pioneer Soc.* (1953) 40 Cal.2d 852,  
12 860.) Thus, any property transferred to a corporation or other institution organized  
13 for a charitable purpose without a declaration of the use to which the property is to  
14 be put, is received and held by it in trust to carry out the objects for which the  
15 organization was created. “In addition to the general public interest, however, there  
16 is the interest of donors who have directed that their contributions be used for  
17 certain charitable purposes. Although the public in general may benefit from any  
18 number of charitable purposes, charitable contributions must be used only for the  
19 purposes for which they were received in trust.” (*Holt v. College of Osteopathic*  
20 *Physicians & Surgeons* (1964) 61 Cal.2d. 750, 754, citing *O'Hara v. Grand Lodge*  
21 *I.O.G.T.* (1931) 213 Cal. 132, 140-141; *Pacific Home v. County of Los Angeles*  
22 (1953) 41 Cal.2d 844, 854; see also *Estate of Faulkner* (1954) 128 Cal.App.2d.  
23 575, 578.) In addition, there is a duty to use charitable funds for the purposes  
24 declared to the person from whom they were solicited. (Bus. & Prof. Code §  
25 17510.8; *People v. Orange County Charitable Services* (1999) 73 Cal.App.4th  
26 1054.)

27 Title 11 U.S.C.S. section 541(b) states “Property of the estate does not  
28 include (1) any power that the debtor may exercise solely for the benefit of an entity

1 other than the debtor.” Further, Title 11 U.S.C.S. section 541(d) states that any  
2 property in which the debtor holds bare legal title and no equitable interest becomes  
3 property of the estate only to the extent of the debtor’s legal title to such property.  
4 Restricted donations to nonprofit corporations have been held not to be property of  
5 the bankruptcy estate and therefore were not available for distribution  
6 to the general creditors. (*In re Save Our Springs (S.O.S.) Alliance, Inc.*, 388 B.R.  
7 202, 247-249 (Bkrcty. W.D. Tex. 2008); *In re Parkview Hospital*, 211 B.R. 619  
8 (Bankr. N.D. Ohio 1997).)

9 Similarly, an Oregon bankruptcy court held the principal portion of an  
10 endowed fund as not part of the bankruptcy estate finding that the debtor holds  
11 legal but not equitable title to the funds under Title 11 U.S.C.S. section 541(d). (*In*  
12 *Re Roman Catholic Archbishop of Portland in Oregon*, 345 B.R. 686, 705 (Bkrcty.  
13 Or. 2006).) However, the same Oregon bankruptcy court also held the charity’s  
14 income portion of the endowed fund is part of the bankruptcy estate. The court held  
15 that “[T]he bankruptcy estate takes whatever interests a debtor has in property as of  
16 the petition date, subject to the same limitations and restrictions on the use of the  
17 property that existed prepetition. (*Id.*)

18 These restricted charitable funds are held in a charitable trust, must be used  
19 for the restricted purposes, are not subject to liens or other encumbrances, are not  
20 available to cover operating expenses or other activities of the nonprofit  
21 corporation, and are not available for distribution to the general creditors, nor are  
22 they available to serve as cash collateral.

23 **B. Carve-Out for Compliance with the California Attorney General’s**  
24 **Conditions and Restricted Charitable Funds**

25 Debtor’s cash collateral and debtor-in-possession financing motion (Dkt. No.  
26 31) seek entry of interim and final orders including provisions that appear to  
27 inappropriately provide for liens on the charitable trust assets that are not subject to  
28 liens or other encumbrances.

1           These provisions may also prevent the Debtor from complying with the  
2 California Attorney General’s conditions and enforcement of charitable trust law.  
3 The Debtor appears to seek authority to use the charitable trust assets for purposes  
4 other those allowed under applicable law. The Debtor is required by statute to  
5 operate its business, as a debtor-in-possession, in compliance with applicable state  
6 law. Federal law is absolutely clear on this point. 28 U.S.C. § 959(b) provides, in  
7 pertinent part, that “a trustee . . . (or) a debtor in possession shall manage and  
8 operate the property in his possession . . . according to the requirements of the valid  
9 laws of the State in which such property is situated. . .” As such, the California  
10 Attorney General asks that any cash collateral and debtor-in-possession financing  
11 orders include a carve out compliance with the California Attorney General’s  
12 Conditions and any restricted charitable funds held by the Debtor and proposes the  
13 following language:

14           Nothing in this order shall create or validate liens on or allow the use  
15 of any assets that are not assets of, or subject to being encumbered by,  
16 the debtors under applicable law. These assets may include, but are  
not limited to, restricted charitable funds.

17           Nothing in this order shall in any way diminish the obligation of any  
18 entity, including the debtors, to comply with applicable state law and  
19 conditions including, but not limited to, charitable trust laws and the  
20 conditions set forth in the California Attorney General’s Decision  
dated December 3, 2015. Further, nothing in this order or the budget  
shall prevent the debtor from complying with any such obligations or  
conditions.<sup>3</sup>

21  
22           **C. Notice To The State of California and Its Agencies, Departments,  
and Subdivisions**

23           Debtor’s emergency motion for an order limiting scope of notice (Dkt. No.  
24 25) seeks approval to give the State of California notice rather than the individual  
25 state agencies, departments, and subdivisions. The Debtors know which state  
26 agencies, departments, and subdivisions they and their entities are obligated to and

27  
28           <sup>3</sup> Further, the order should clarify that any set-off or recoupment rights are  
not affected by the order.

1 regulated by. The California Attorney General requests that the Debtors be required  
2 to give notice to all the state agencies, departments, and subdivisions they are  
3 obligated to or regulated by including, but not limited to, California Department of  
4 Public Health and California Department of Health Care Services, and the  
5 California bonding and taxing authorities.

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Dated: September 4, 2018

Respectfully submitted,  
XAVIER BECERRA  
Attorney General of California  
JAMES M. TOMA  
Supervising Deputy Attorney General  
*for Alicia Berry*  
ALICIA BERRY  
Deputy Attorney General  
*Attorneys for Xavier Becerra*  
*California Attorney General*

**EXHIBIT A**





**KAMALA D. HARRIS**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**

300 SOUTH SPRING STREET, SUITE 1702  
LOS ANGELES, CA 90013

Public: (213) 897-2000  
Telephone: (213) 897-2178  
Facsimile: (213) 897-7605  
E-Mail: wendi.horwitz@doj.ca.gov

December 3, 2015

**Sent by Internet and U.S. Mail**

John O. Chesley, Esq.  
ROPES & GRAY LLP  
Three Embarcadero Center  
San Francisco, CA 94111-4006

RE: Proposed Change in Governance and Control of Daughters of Charity Health System

Dear Mr. Chesley:

Pursuant to Corporations Code section 5914 *et seq.*, the Attorney General hereby conditionally consents to the proposed change in governance and control of Daughters of Charity Health System pursuant to the terms of the System Restructuring and Support Agreement entered into by and between Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC, a Delaware limited liability company, and Integrity Healthcare, LLC, a Delaware limited liability company. Corporations Code section 5917, and California Code of Regulations, title 11, section 999.5, subdivision (f), set forth factors that the Attorney General shall consider in determining whether to consent to a proposed transaction between a nonprofit corporation and a for-profit corporation. The Attorney General has considered such factors and consents to the proposed transaction subject to the attached conditions that are incorporated by reference herein.

Thank you for your cooperation throughout the review process.

Sincerely,

A handwritten signature in cursive script that reads "Wendi A. Horwitz".

WENDI A. HORWITZ  
Deputy Attorney General

For **KAMALA D. HARRIS**  
Attorney General

Enclosure  
Cc: Mark Waxman, Esq.

**Conditions to Change in Control and Governance of St. Francis Medical Center<sup>1</sup> and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC<sup>2</sup>, and Integrity Healthcare, LLC**

**I.**

These Conditions shall be legally binding on Daughters of Charity Ministry Services Corporation, a California nonprofit religious corporation, Daughters of Charity Health System, a California nonprofit religious corporation, Verity Health System of California, Inc., a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit religious corporation, St. Francis Medical Center, a California nonprofit religious corporation, O'Connor Hospital, a California nonprofit religious corporation, Saint Louise Regional Hospital, a California nonprofit religious corporation, and Seton Medical Center, a California nonprofit religious corporation, St. Francis Medical Center of Lynwood Foundation, a California nonprofit religious corporation, St. Vincent Foundation, a California nonprofit religious corporation, Seton Medical Center Foundation, a California nonprofit religious corporation, Saint Louise Regional Hospital Foundation, a California nonprofit religious corporation, O'Connor Hospital Foundation, a California nonprofit religious corporation, Caritas Business Services, a California nonprofit religious corporation, Verity Business Services, a California nonprofit public benefit corporation, DCHS Medical Foundation, a California nonprofit religious corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures – San Jose ASC, LLC, a California limited liability company, DePaul Ventures – San

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<sup>1</sup> Throughout this document, the term “St. Francis Medical Center” shall mean the general acute care hospital located at 3630 East Imperial Highway, Lynwood, CA 90262, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Francis Medical Center by the California Department of Public Health, effective January 1, 2015, unless otherwise indicated.

<sup>2</sup> The term “Certain Funds Managed by BlueMountain Capital Management, LLC” shall mean the following: BlueMountain Guadalupe Peak Fund, L.P., a Delaware limited partnership, by BlueMountain Capital Management, LLC, its investment manager, BlueMountain Summit Opportunities Fund II (US) L.P., a Delaware limited partnership, by BlueMountain Capital Management, LLC, its investment manager, BMSB L.P., a Delaware limited partnership, by BlueMountain Capital Management, LLC, its investment manager, BlueMountain Foinaven Master Fund L.P., a Cayman Island exempted limited partnership, by BlueMountain Capital Management, LLC, its investment manager, BlueMountain Logan Opportunities Master Fund L.P., a Cayman Island exempted limited partnership, by BlueMountain Capital Management, LLC, its investment manager, and BlueMountain Montenvers Master Fund SCA SICAV-SIF, a Luxembourg corporate partnership limited by shares, by BlueMountain Capital Management, LLC, its investment manager.

Jose Dialysis, LLC, a California limited liability company, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, the above-listed entities whose corporate status will be changed from a California nonprofit religious corporation to a California nonprofit public benefit corporation, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Francis Medical Center, or the real property on which St. Francis Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Francis Medical Center, and any and all current and future lessees and owners of the real property on which St. Francis Medical Center is located.

These Conditions shall be legally binding on the following entities, as defined in Operating Asset Purchase Option Agreement, Operating Asset Purchase Agreement, Real Estate Purchase Option Agreement, and the Real Estate Purchase Agreement, when the closing occurs on the Operating Asset Purchase Agreement and the Real Estate Purchase Agreement: the Option Holders, Purchaser and its Affiliates, "OpCo" a Delaware limited liability company, owned directly or indirectly by funds managed by BlueMountain Capital Management LLC, and "PropCo" a Delaware limited liability company that will elect to be treated for tax purposes as a real estate investment trust, owned directly or indirectly by funds managed by BlueMountain Capital Management LLC, Integrity Healthcare, LLC, a Delaware limited liability company, Integrity Healthcare Blocker, LLC, a Delaware limited liability company, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, managing member, assignee, or person or entity serving in a similar capacity of any of the above-listed entities, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Francis Medical Center, or the real property on which St. Francis Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Francis Medical Center, and any and all current and future lessees and owners of the real property on which St. Francis Medical Center is located.

## II.

The transaction approved by the Attorney General consists of the System Restructuring and Support Agreement dated July 17, 2015, Amendment No. 1 to System Restructuring and Support Agreement, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the System Restructuring and Support Agreement and Amendment No. 1 to System Restructuring and Support Agreement including, but not limited to:

- a. Transitional Consulting Services Agreement dated July 17, 2015;
- b. Health System Management Agreement with Integrity Healthcare, LLC;
- c. Debt Facility Commitment Letter dated July 17, 2015, signed by all the funds listed in footnote 2 and BlueMeridian Capital, LLC;
- d. Operating Asset Purchase Option Agreement;
- e. Operating Asset Purchase Agreement;

- f. Real Estate Purchase Option Agreement;
- g. Real Estate Purchase Agreement;
- f. Information Technology Lease Agreement; and
- g. Deposit Escrow Agreement dated July 17, 2015.

All the entities listed in Condition I, Integrity Healthcare, LLC, a Delaware limited liability company, BlueMountain Capital Management, LLC, a Delaware limited liability company, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

### III.

For fifteen years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center, and all future owners, managers, lessees, licensees, or operators of St. Francis Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Francis Medical Center;
- (b) Transfer control, responsibility, management, or governance of St. Francis Medical Center. The substitution or addition of a new corporate member or members of St. Francis Medical Center or Verity Health System of California, Inc. that transfers the control of, responsibility for or governance of St. Francis Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of St. Francis Medical Center or Verity Health System of California, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of St. Francis Medical Center or Verity Health System of California, Inc., shall also be deemed a transfer for purposes of this Condition.

#### IV.

For ten years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide 24-hour emergency and trauma medical services at no less than current<sup>3</sup> licensure and designation with the same types and/or levels of services, including the following:

- a. 46 emergency treatment stations at a minimum;
- b. Designation as a Level II Trauma Center and operating a Level II Trauma Center that complies with all requirements under California laws and regulations and Los Angeles County Emergency Medical Services Agency Prehospital Care Policies and Procedures;
- c. Designation as a 5150 Receiving Facility, as defined by the Welfare and Institutions Code, section 5150, for behavioral health patients under involuntary evaluation, and operating such a receiving facility that complies with all requirements under Welfare and Institutions Code, section 5150 and other California laws and regulations;
- d. Psychiatric evaluation team;
- e. Designation as an Emergency Department Approved for Pediatrics;
- f. Designation as a Paramedic Base Station, with the same number of assigned paramedic units that currently exists; and
- g. The annual maximum number of hours on diversion is 200 hours.

St. Francis Medical Center must give one-year advance written notice to the Los Angeles County Emergency Medical Services Agency and the California Department of Public Health if St. Francis Medical Center seeks to reduce trauma or trauma-related care services or stop operating the Level II Trauma Center after ten years from the closing date of the System Restructuring and Support Agreement.

#### V.

For at least ten years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall maintain on-call coverage contracts and/or comparable coverage arrangements with physicians at fair market value that are necessary to ensure trauma coverage, including the following specialty services:

- a. General surgery;
- b. Trauma surgery;
- c. Neuro-trauma surgery;
- d. Obstetrical/gynecological surgery;
- e. Orthopedic surgery;
- f. Trauma orthopedic surgery;

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<sup>3</sup> The term "current" or "currently" throughout this document means as of January 1, 2014.

- g. Vascular surgery;
- h. Cardiothoracic surgery;
- i. Plastic surgery;
- j. Ophthalmology;
- k. Otolaryngology;
- l. Anesthesia; and
- m. Urology.

## VI.

For at least ten years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall maintain, provide, and expand the following services at current licensure, types, and/or levels of services:

- a. Cardiac services, including at a minimum, three cardiac catheterization labs and the designation as a STEMI Receiving Center;
- b. Critical care services, including a minimum of 36 intensive care unit beds or 24 intensive care unit beds and 12 System Restructuring and Support observation beds;
- c. Advanced certification as a Primary Stroke Center;
- d. Neonatal intensive care services, including a minimum of 29 neonatal intensive care beds, and at minimum, maintaining a Level II Neonatal Intensive Care Unit;
- e. Women's health services, including women's imaging services;
- f. Cancer services, including radiation oncology;
- g. Pediatric services, including a minimum of 14 pediatric beds;
- h. Orthopedic and rehabilitation services;
- i. Wound care and hyperbaric medicine services;
- j. Reproductive health services and expand such services to include those prohibited by the "Ethical and Religious Directives for Catholic Health Care Services" as determined by the United States Conference of Catholic Bishops;
- k. Inpatient psychiatric services, including a minimum of 40 inpatient acute psychiatric beds; and
- l. Obstetric services, including a minimum of 50 obstetrics beds.

St. Francis Medical Center shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

## VII.

For five years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall either: (1) operate the 1206(d) clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures (e.g., 1206(l) Medical Foundation), or (2) sell the 1206(d) clinics (listed below) with the same number of physician and mid-level provider full-time equivalents in the and require the purchaser(s) to maintain such services for 5 years from the closing date of the

System Restructuring and Support Agreement and to participate in the Medi-Cal and Medicare programs as required in Condition VIII, or (3) ensure that a third party is operating the 1206(d) clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the System Restructuring and Support Agreement and to participate in the Medi-Cal and Medicare programs as required in Condition VIII. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Francis Medical Center can utilize an alternative structure (e.g., Federally Qualified Health Center, physician office practice) in providing such services. The following 1206 (d) clinics are subject to this condition:

- a. Lynwood Clinic – Family Practice and Pediatrics, located at 3628 E. Imperial Highway, #303 in Lynwood;
- b. Downey Clinic – Family Practice and Pediatrics, located at 7840 Imperial Highway, Unit B, in Downey; and
- c. Orthopedics Clinic, located at 3628 E. Imperial Highway, #300, in Lynwood.

#### VIII.

For ten years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall:

- a) Be certified to participate in the Medi-Cal program;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause:
  - i) Local Initiative: LA Care Health Plan or its successor; and
  - ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If St. Francis Medical Center questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

- c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

## IX.

For eleven fiscal years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall provide an annual amount of Charity Care (as defined below) at St. Francis Medical Center equal to or greater than \$16,646,323 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by St. Francis Medical Center in connection with the operation and provision of services at St. Francis Medical Center. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.<sup>4</sup> St. Francis Medical Center shall use and maintain a charity care policy that is no less favorable than St. Francis Medical Center's current charity care policy and in compliance with California and Federal law. The planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Francis Medical Center shall be decided by the St. Francis Medical Center Board of Directors after consultation with the Local Governing Board of Directors as set forth in Condition XII.

St. Francis Medical Center's obligation under this Condition shall be prorated on a daily basis if the closing date of the System Restructuring and Support Agreement is a date other than the first day of St. Francis Medical Center's fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area Base Period: 1982-84=100" (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

While the Health System Management Agreement with Integrity Healthcare, LLC is in effect, if the actual amount of charity care provided at St. Francis Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, St. Francis Medical Center shall pay an amount equal to the deficiency as follows: 50% of the deficiency payment as a contribution to the Daughters of Charity Health System Retirement Plan (Defined Benefit Church Plan), as defined in the System Restructuring and Support Agreement, in addition to the contributions that are required by the amortization schedule and premium payments required under Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 (as amended), as set forth in section 7.3 in the System Restructuring and Support Agreement until the Defined Benefit Church Plan is fully funded, and 50% of the deficiency payment for capital expenditures as set forth in section 7.7 of the System Restructuring and Support Agreement for repairing and/or upgrading the hospital buildings and equipment including, but not limited to, seismic

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<sup>4</sup> OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."



compliance as required in Condition XVI. Such payments shall be made within four months following the end of such fiscal year.

After the closing date on the Operating Asset Purchase Agreement and the Real Estate Purchase Agreement, if the actual amount of charity care provided at St. Francis Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, St. Francis Medical Center shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct health care services to residents in St. Francis Medical Center's service area (30 ZIP codes), as defined on page 65 of the Health Care Impact Report, dated October 2, 2015, and attached hereto as Exhibit 1. Such payment(s) shall be made within four months following the end of such fiscal year.

The 2010 Federal Affordable Care Act may cause a reduction in future needs of charity care. Because of the impact of the Medi-Cal expansion in California and other effects from the 2010 Federal Affordable Care Act, the California Attorney General will consider adjusting the Minimum Charity Care Amount based on financial data submitted to OSHPD from time periods after implementation of the 2010 Federal Affordable Care Act. Any actual reduction will be considered "unforeseen" for purposes of Title 11, California Code of Regulations, section 999.5, subdivision (h). Once St. Francis Medical Center submits its Annual Financial Disclosure Report to OSHPD for Fiscal Year 7/1/2015 to 6/30/2016, it may seek a request for an amendment of the Minimum Charity Care Amount beginning for Fiscal Year 7/1/2016 to 6/30/2017. The Attorney General's Decision on such a request will be issued within 90 days of the submission of all of the information required in Title 11, California Code of Regulations, section 999.5, subdivision (h)(2) and all the information requested by the Attorney General's Office.

#### X.

For eleven fiscal years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall provide an annual amount of Community Benefit Services at St. Francis Medical Center equal to or greater than \$1,362,680 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. For eleven fiscal years, the following community benefit programs and services shall continue to be offered:

- a. Health Benefits Resource Center;
- b. Welcome Baby Program;
- c. Healthy Community Initiatives;
- d. St. Francis Career College's access for onsite training;
- e. Paramedic Training and Education; and
- f. Patient Transportation support.

The planning of, and any subsequent changes to, the community benefit services provided at St. Francis Medical Center shall be decided upon by the St. Francis Medical Center's Board of Directors after consultation with the Local Governing Board of Directors as set forth in Condition XII.

St. Francis Medical Center's obligation under this Condition shall be prorated on a daily basis if the effective date of the System Restructuring and Support Agreement is a date other than the first day of St. Francis Medical Center's fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area Base Period: 1982-84=100" (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Francis Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, St. Francis Medical Center shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Francis Medical Center's service area (30 ZIP codes), as defined on page 65 of the Health Care Impact Report, dated October 2, 2015, and attached hereto as Exhibit 1. Such payment shall be made within four months following the end of such fiscal year.

## XI.

For at least ten years from the closing date of the System Restructuring and Support Agreement unless otherwise indicated, St. Francis Medical Center shall maintain its contracts and any amendments and exhibits thereto with the County of Los Angeles for services, including the following:

- a. Radiation Therapy Services Agreement;
- b. Impacted Hospital Program Agreement until terminated by Los Angeles County in June 2016;
- c. Department of Mental Health Legal Entity Agreement;
- d. Mental Health Services Agreement Contract Allowable Rate-Fee for Service Medi-Cal Acute Psychiatric Inpatient Services;
- e. EDAP Confirmation Agreement;
- f. Designation Agreement (72-Hours Evaluation and Intensive Treatment Facility);
- g. Paramedic Base Hospital Services Agreement;
- h. Trauma Center Services Agreement;
- i. Trauma Center Services Augmentation Agreement until terminated by Los Angeles County in December 2015;
- j. Nursing Affiliation Agreement; and
- k. Hospital Preparedness Program Agreement.

For at least ten years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents

related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Francis Medical Center. The goal is to ensure that St. Francis Medical Center's decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

## **XII.**

For ten years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall have a Local Governing Board of Directors. St. Francis Medical Center's Board of Directors shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures including the spending of the funds for the "Capital Commitment" set forth in section 7.7 of the System Restructuring and Support Agreement and attached hereto as Exhibit 2, making changes to the charity care and collection policies, and making changes to charity care services provided at St. Francis Medical Center. The members of the Local Governing Board shall include physicians from St. Francis Medical Center's medical staff, St. Francis Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Francis Medical Center's primary service area (30 ZIP codes), as defined on page 65 of the Health Care Impact Report, dated October 2, 2015, and attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

## **XIII.**

Verity Health System of California, Inc. shall reserve or expend the \$180 million capital commitment set forth in section 7.7 of the System Restructuring and Support Agreement and attached hereto as Exhibit 2.

## **XIV.**

Verity Health System of California, Inc. shall comply with the pension obligations set forth in section 7.3 of the System Restructuring and Support Agreement. Section 7.3 of the System Restructuring and Support Agreement should be amended to include the following language:

(f) Notwithstanding any limitations set forth in the documents governing the Defined Benefit Church Plan, the Defined Contribution Church Plans, and the Multiemployer Plans, the participants of these plans have the legal right to enforce compliance of Section 7.3 against Verity Health System of California, Inc.

**XV.**

St. Francis Medical Center shall maintain privileges for current medical staff who are in good standing as of the closing date of the System Restructuring and Support Agreement. Further, the closing of the System Restructuring and Support Agreement shall not change the medical staff officers, committee chairs, or independence of the St. Francis Medical Center's medical staff, and such persons shall remain in good standing for the remainder of their tenure.

**XVI.**

Verity Health System of California, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at St. Francis Medical Center through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070).

**XVII.**

Within sixty days of the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center's Board of Trustees shall replace Article of IV, Section 3, subsection (a) of its Amended and Restated Bylaws Template (attached hereto as Exhibit 3) with the following language:

(a) Number and Composition. The Board of Trustees shall generally consist of not less than five (5) nor more than seventeen (17) members, including:

i) no more than 50 percent shall be members who are in good standing on the Board of Directors of Verity Health System of California, Inc.;

ii) at least one-third shall be residents of Los Angeles County; and

iii) no members shall have either directly or indirectly, personally or through a family member have any financial relationship with BlueMountain Capital Management, LLC or any of its owned or managed affiliates or Integrity Healthcare, LLC, and may not serve as an officer, director, contractor or employee of BlueMountain Capital Management, LLC or any of its owned or managed affiliates, or Integrity Healthcare, LLC, any managed fund, or entity in which BlueMountain Capital Management, LLC has an equity stake or option to purchase, except for public companies wherein BlueMountain Capital Management, LLC has an interest of less than 10%.

St. Francis Medical Center's Board of Trustees shall provide a copy of its Amended and Restated Articles of Incorporation (as set forth in attached Amended and Restated Articles Template as Exhibit 4) and Amended and Restated Bylaws within 90 days from the closing date of the System Restructuring and Support Agreement requiring these provisions and any further changes to these documents must be approved by the Attorney General.

Within sixty days of the closing date of the System Restructuring and Support Agreement, Verity Health System of California, Inc. shall adopt the same Conflict of Interest Policy currently used by Daughters of Charity Health System and its affiliates (attached hereto as Exhibit 5) except that all references to the "Corporation" in the Conflict of Interest Policy shall be amended to "Corporation, or BlueMountain Capital Management, LLC and or any of its owned or managed affiliates, or Integrity Healthcare, LLC" and a portion of its "Financial Interest" definition section on page 2 shall be amended to state as follows:

**4. Financial Interest:** A Director or Family member has, directly or indirectly, a current or potential

- Ownership or investment interest in; or
- Compensation arrangement with; or
- Other economic interest in any of the following:
  - i. The Corporation; or
  - ii. BlueMountain Capital Management, LLC and or any of its owned or managed affiliates and Integrity Healthcare, LLC; or
  - iii. Any entity or individual with which the Corporation, BlueMountain Capital Management, LLC and or any of its owned or managed affiliates, or Integrity Healthcare, LLC has a transaction or arrangement; or
  - iv. Any entity or individual with which the Corporation, BlueMountain Capital Management, LLC and or any of its owned or managed affiliates, or Integrity Healthcare, LLC is negotiating a transaction or arrangement; or
  - v. Any entity or individual that competes with the Corporation, BlueMountain Capital Management, LLC and or any of its owned or managed affiliates, or Integrity Healthcare, LLC.

Verity Health System of California, Inc. Board of Trustees shall provide a copy of its Conflict of Interest Policy within 90 days from the closing date of the System Restructuring and Support Agreement requiring this amendment and any further changes to this document must be approved by the Attorney General.

Verity Health System of California, Inc. shall provide a copy of its Amended and Restated Articles of Incorporation (as set forth in attached Amended and Restated Articles Template as Exhibit 6) and the Amended and Restated Bylaws (as set forth in the attached hereto Amended and Restated Bylaws Template as Exhibit 7) within 90 days from the closing date of the System Restructuring and Support Agreement and any further changes to these documents must be approved by the Attorney General.

If either the Verity Health System of California, Inc.'s Board of Directors or St. Francis Medical Center's Board of Trustees provides board compensation to its members other than reimbursement for travel to and from board/trustees' meetings, it is required to obtain an fair

market valuation for payment of such compensation for similarly-situated board of directors/trustees in the United States every two years.

### **XVIII.**

There shall be no restriction or limitation on providing or making reproductive health services, including such services prohibited by the "Ethical and Religious Directives for Catholic Health Care Services" as determined by the United States Conference of Catholic Bishops, available at St. Francis Medical Center, its medical office buildings, or at any of its facilities. There shall be no discrimination against any lesbian, gay, bisexual, or transgender individuals at St. Francis Medical Center. Both of these must be explicitly set forth in St. Francis Medical Center's written policies, adhered to, and strictly enforced.

### **XIX.**

At least thirty days prior to the closing of the Operating Asset Purchase Agreement and the Real Estate Purchase Agreement, St. Francis Medical Center Foundation shall provide to the Attorney General's Office an accounting of all charitable assets. Within 5 days of the Attorney General's approval, St. Francis Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.

a) The funds from St. Francis Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's St. Francis Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Francis Medical Center's service area (30 ZIP codes), as described on page 65 in the Healthcare Impact Report authored by Medical Development Specialists, LLC, dated October 2, 2015. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.

b) If there are funds from St. Francis Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.

**XX.**

For eleven fiscal years from the closing date of the System Restructuring and Support Agreement, St. Francis Medical Center shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of St. Francis Medical Center and the Chief Executive Officer at St. Francis Medical Center shall each certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the St. Francis Medical Center's Board of Directors and the Local Governing Board.

**XXI.**

At the request of the Attorney General, all parties listed in Condition I, Integrity Healthcare, LLC, a Delaware limited liability company, BlueMountain Capital Management, LLC, a Delaware limited liability company, and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

**XXII.**

Once the System Restructuring and Support Agreement is closed, all parties listed in Condition I, Integrity Healthcare, LLC, a Delaware limited liability company, BlueMountain Capital Management, LLC, a Delaware limited liability company, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

## CERTIFICATE OF SERVICE

Case Name: **In re: VERITY HEALTH** No. 18-bk-20151-ER  
**SYSTEMS OF CALIFORNIA,**  
**INC.**

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I hereby certify that on **September 4, 2018**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**ATTORNEY GENERAL'S INITIAL LIMITED OBJECTION TO DEBTOR'S  
EMERGENCY FRIST DAY MOTIONS; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On **September 4, 2018**, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Samuel R. Maizel, Esq.  
[samuel.maizel@dentons.com](mailto:samuel.maizel@dentons.com)

John A. Moe, Esq.  
[john.moe@dentons.com](mailto:john.moe@dentons.com)

Tania M. Moyron, Esq.  
[tania.moyron@dentons.com](mailto:tania.moyron@dentons.com)


**DENTONS US LLP**  
601 South Figueroa Street, Ste. 2500  
Los Angeles, CA 90017

*Attorneys for Debtor*  
*Verity Health Systems of California, Inc.*



I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **September 4, 2018**, at Los Angeles, California.

Teresa DePaz  
Declarant



Signature

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