

1 XAVIER BECERRA
Attorney General of California
2 JENNIFER M. KIM
Supervising Deputy Attorney General
3 KENNETH K. WANG
Deputy Attorney General
4 State Bar No. 201823
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6217
6 Fax: (213) 897-2805
E-mail: Kenneth.Wang@doj.ca.gov
7 *Attorneys for Creditor*
California Department of Health Care Services

8
9 IN THE UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION
11

12
13 **In re:**

14
15 **VERITY HEALTH SYSTEM OF**
16 **CALIFORNIA, INC., et al.,**

17 Debtor and Debtors In
18 Possession.

CASE NO. 2:18-bk-20151-ER

**CREDITOR CALIFORNIA
DEPARTMENT OF HEALTH
CARE SERVICES'S
EMERGENCY MOTION FOR
THE ENTRY OF AN ORDER TO
STAY THE SALE OF MEDI-CAL
PROVIDER AGREEMENTS FREE
AND CLEAR OF INTERESTS
AND THE ASSET PURCHASE
PROVISIONS THAT RELATE TO
BUYER SGM'S RIGHTS AND
OBLIGATIONS UNDER
DEBTORS' MEDI-CAL
PROVIDER AGREEMENTS [ECF
NO. 3146]**

22 Date: TBD
23 Time: TBD
24 Courtroom: 1568
Judge Ernest M. Robles

25 /x/ Affects All Debtors.
Affects Verity Health System of
California, Inc.
26 Affects O'Connor Hospital
Affects Saint Louise Regional Hospital
27 Affects St. Francis Medical Center
Affects St. Vincent Medical Center
28 Affects Seton Medical Center



1 Affects O'Connor Hospital Foundation
2 Affects Saint Louise Regional Hospital
3 Foundation
4 Affects St. Francis Medical Center of
5 Lynwood Foundation
6 Affects St. Vincent Foundation
7 Affects St. Vincent Dialysis Center,
8 Inc.
9 Affects Seton Medical Center
10 Foundation
11 Affects Verity Business Services
12 Affects Verity Medical Foundation
13 Affects Verity Holdings, LLC
14 Affects De Paul Ventures, LLC
15 Affects De Paul Ventures – San Jose
16 Dialysis, LLC,

Debtors and Debtors in
Possession.

11 **TO THE COURT AND COUNSEL OF RECORD FOR DEBTORS, U.S.**
12 **TRUSTEE, AND CREDITOR:**

13 Creditor California Department of Health Care Services (Department) hereby
14 moves the Court, on an emergency basis (Local Bankruptcy Rule 9075-1(a)), for
15 the entry of an order to stay the sale of Debtors' Medi-Cal Provider Agreements to
16 Buyer Strategic Global Management, Inc. (SGM) free and clear of claims, interests,
17 and encumbrances, pursuant to 11 U.S.C. § 363(f)(5) and the Asset Purchase
18 Agreement (APA) provisions that relate to SGM's rights and obligations under
19 Debtors' Medi-Cal Provider Agreements and the APA provisions that relate to
20 SGM's rights and obligations under Debtors' Medi-Cal Provider Agreements,
21 pending the Department's appeal therefrom. The sale to SGM is expected to close
22 as early as mid-October 2019. The Department needs time to request a stay from
23 the United States District Court for the Central District of California, if necessary.
24 Although instructed by the Court, Debtors still have not submitted an order with
25 regard to the Court's Memorandum of Decision (ECF No. 3146).

26 The Department requests that the stay sought be granted because the
27 Department will suffer immediate and irreparable harm if the requested stay is
28 denied, which will result in millions of taxpayer money being dissipated and will

1 severely impact funding for and integrity of the Medi-Cal system. Aside from the
2 irreparable injury to the Medi-Cal system, including Medi-Cal beneficiaries and
3 other Medi-Cal service providers, the Department is likely to succeed on the merits
4 of the appeal. The Department has a “fair chance” of prevailing that the Medi-Cal
5 Provider Agreement is an executory contract that requires assumption and
6 assignment. Further, there will be no harm to other creditors if resolution of the
7 Medi-Cal Provider Agreement (Agreement) transfer issues is delayed. Lastly, a
8 stay will certainly promote public interests. Any money recovered by the
9 Department will safeguard the integrity of Medi-Cal and will result in additional
10 federal matching funds for Medi-Cal, which will benefit the public. Satisfaction of
11 all four factors requires this Court to stay the Agreement transfer issues and stay
12 distributions of funds that are necessary to satisfy the Debtors’ debt associated with
13 the Agreements, including the Hospital Quality Assurance Fee (HQA Fee) debt, the
14 Medi-Cal overpayment debt, and other Medi-Cal debt incurred by the Debtors.

15 **PLEASE TAKE NOTICE** that this Motion is based on this Notice and
16 Motion, the attached Memorandum of Points and Authorities, the concurrently filed
17 declarations of Deputy Attorney General Kenneth Wang and Hanh Vo, the
18 arguments of counsel, and other admissible evidence brought before the Court at or
19 before the hearing on this Motion.

20 **PLEASE TAKE FURTHER NOTICE** that the Department is serving this
21 Notice and Motion, the Memorandum of Points and Authorities, and Declaration of
22 Deputy Attorney General Kenneth Wang on the Debtors, the Creditors Committee,
23 the Office of the United States Trustee, and United States Attorney as set forth in
24 the attached proof of service. In the event that the Court sets a hearing on the
25 Motion, the Department shall provide notice of the entry of the order setting the
26 hearing on each of the foregoing parties and such other parties as the Court directs,
27 including by telephonic service.

28 For the foregoing reasons, and as may further be set forth at or before the

1 hearing on this Motion, the Department respectfully requests that this Court enter
2 an order staying its order authorizing the Debtors to sell their Medi-Cal Provider
3 Agreements free and clear of claims, interests, and encumbrances, pursuant to 11
4 U.S.C. § 363(f)(5) and the APA provisions that relate to SGM's rights and
5 obligations under Debtors' Medi-Cal Provider Agreements.

6
7 Dated: October 3, 2019

Respectfully submitted,

8 XAVIER BECERRA
9 Attorney General of California
10 JENNIFER M. KIM
11 Supervising Deputy Attorney
12 General

13
14 /s/ Kenneth K. Wang
15 KENNETH K. WANG
16 Deputy Attorney General
17 *Attorneys for*
18 Creditor California Department of
19 Health Care Services
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INTRODUCTION

Good cause exists for this Court to stay its order authorizing Debtors St. Francis Medical Center (St. Francis), St. Vincent Medical Center, and Seton Medical Center (collectively, Debtors) to sell their Medi-Cal Provider Agreements, free and clear of interests, including tens of millions of Medi-Cal debt owed by the Debtors.

The Department will suffer immediate and irreparable harm if the requested stay is denied, which will result in tens of millions of taxpayer dollars being dissipated and will negatively impact funding for and integrity of the Medi-Cal system. Aside from the irreparable injury to the Medi-Cal system, including Medi-Cal beneficiaries, the Department is likely to succeed on the merits of the appeal. The Department has a “fair chance” of prevailing that the Medi-Cal Provider Agreement is an executory contract that requires assumption and assignment. Further, there will be no harm to other creditors if resolution of the Medi-Cal Provider Agreement transfer issues is delayed. Lastly, a stay will certainly promote the public interest. Any money recovered by the Department will safeguard the integrity of Medi-Cal and will result in additional federal matching funds for Medi-Cal, which will benefit and promote public interests.

Satisfaction of all four factors requires this Court to stay the Agreement transfer issues, distributions of funds that are necessary to satisfy the Debtors’ debt associated with the Agreements, including the Hospital Quality Assurance Fee (HQA Fee) debt, the Medi-Cal overpayment debt, and other Medi-Cal debt incurred by the Debtors, and the Asset Purchase Agreement (APA) provisions that relate to SGM’s rights and obligations under Debtors’ Medi-Cal Provider Agreements.

ARGUMENT

Federal Rules of Bankruptcy Procedure 8007(a)(1)(A) allows a bankruptcy court to suspend an order pending appeal. Fed. R. Bankr. P. 8007(a)(1)(A) (2015).

1 Under Federal Rules of Bankruptcy Procedure 8007(a)(2), the motion to stay may
2 be made either before or after the notice of appeal is filed.

3 The standard for determining whether to grant a stay pending appeal is
4 similar to the standard for issuing a preliminary injunction. *Hilton v. Braunskill*
5 (*Braunskill*), 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987); *Tribal*
6 *Vill. of Akutan v. Hodel*, 859 F.2d 662, 663 (9th Cir. 1988); *see also Winter v.*
7 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249
8 (2008) (laying out four-pronged test for preliminary injunctive relief).

9 For both the appellate court and the trial court, “the factors regulating the
10 issuance of a stay are generally the same: (1) whether the stay applicant has made a
11 strong showing that he is likely to succeed on the merits on the appeal; (2) whether
12 the applicant will be irreparably injured absent a stay; (3) whether the issuance of
13 the stay will substantially injure the other parties in the proceeding; and (4) where
14 the public interest lies. *Braunskill*, 481 U.S. at 776; *see also Humane Soc. of U.S.*
15 *v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009). Courts need not give equal weight
16 to each of the four factors. *Standard Havens Products, Inc. v. Gencor Indus., Inc.*,
17 (*Standard Havens*), 897 F.2d 511, 512 (Fed. Cir. 1990); *see also Providence*
18 *Journal Co. v. Fed. Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979).
19 Courts have used the sliding scale approach to deciding motions for stay. *Leiva-*
20 *Perez v. Holder*, 640 F.3d at 965; *Alliance for the Wild Rockies v. Cottrell*, 632
21 F.3d 1127, 1134-35 (9th Cir. 2011).

22 Likelihood of success in the appeal is not a rigid concept. *Standard Havens*,
23 897 F.2d at 512; *see also Washington Metro. Area Transit Comm’n v. Holiday*
24 *Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977). The Ninth Circuit has held that a
25 petitioner, must show, at a minimum that she has “a substantial case for relief on
26 the merits.” *Leiva-Perez v. Holder*, 640 F.3d at 968. “Serious questions are
27 substantial, difficult, and doubtful, as to make them a fair ground for litigation and
28 thus for more deliberative investigation.” *Republic of the Philippines v. Marcos*,

1 862 F.2d 1355, 1362 (9th Cir. 1988) citing *National Wildlife Fed'n v. Coston*, 773
2 F.2d 1513, 1517 (9th Cir. 1985). “Serious questions need not promise a certainty of
3 success, not even present a probability of success, but must involve a ‘fair chance’
4 of success on the merits.” *Id.* The Ninth Circuit has held that so long as other
5 requirements are met, “serious questions going to the merits . . .” can support
6 issuance of a preliminary injunction. *Alliance for the Wild Rockies v. Cottrell*, 632
7 F.3d at 1135. A “fair chance” means “something less than fifty percent.” *Planned*
8 *Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 530 F. 724, 729
9 (8th Cir. 2008); *Mohammed v. Reno*, 309 F.3d 95, 102 (2nd Cir. 2002) (“[i]f the
10 likelihood were more than 50 percent, the appellant would be required to persuade
11 the stay panel that he was more likely than not to win the appeal before the merits
12 panel, just to obtain the critical opportunity to maintain the status quo until the
13 merits panel considers the appeal.”)

14 Here, this Court’s ruling to authorize transfer of Debtors’ Medi-Cal Provider
15 Agreements free and clear of tens of millions of Medi-Cal debt, including \$25
16 million of Medi-Cal overpayments to St. Francis for one fiscal year (taxpayer
17 funds), is a very serious question that needs to be further considered and reviewed
18 by the appellate courts.

19 A motion for stay of the order of a bankruptcy judge must ordinarily be
20 presented to the bankruptcy judge in the first instance. Fed. R. Bankr. P. 8007
21 (2015).

22 **PROCEDURAL BACKGROUND**

23 On August 31, 2018 (Petition Date), Debtors filed their voluntary petitions
24 for relief under Chapter 11 of Title 11 of the United States Code. Debtors’ cases
25 are jointly administered with their affiliates and, pursuant to 11 U.S.C. §§ 1107(a)
26 and 1108, Debtors continue to operate their businesses and manage their affairs as
27 debtors-in-possession.

28 On January 17, 2019, Debtors filed the Motion for an order (a) approving

1 form of the APA for the Buyer and for prospective orders, (b) approving procedures
2 related to the assumption of certain executory contracts and unexpired leases, and
3 (c) to sell their property free and clear of any claims, liens, and encumbrances.
4 Motion, ECF No. 1279.

5 On January 25, 2019, the Department filed its objection to (1) Debtors'
6 motion for the entry of an order authorizing the sale of property free and clear of all
7 claims, liens, and encumbrances, and (2) approving form of Asset Purchase
8 Agreement. Dept.'s Objection, ECF No. 1353.

9 After the filing of the Department's Objection, Debtors attempted to delay
10 resolution of the issue under the pretense that they wanted to reach a settlement
11 with the Department. Debtors requested many stipulations to continue the hearing
12 on the issue regarding the assumption and assignment of their Medi-Cal Provider
13 Agreements.

14 The first stipulation was filed on April 11, 2019. Declaration of Deputy
15 Attorney General Kenneth K. Wang (Wang Decl.), ¶ 7; ECF No. 2125. As result of
16 this stipulation requested by the Debtors, the hearing regarding the assumption and
17 assignment of the Medi-Cal Provider Agreement was continued to June 5, 2019.
18 Order Approving Stipulation, ECF No. 2153.

19 The second stipulation was requested by the Debtors and filed on May 13,
20 2019. ECF No. 2365. Wang Decl., ¶ 8. As a result of the second stipulation
21 requested by the Debtors, the hearing regarding the assumption and assignment of
22 the Medi-Cal Provider Agreement was continued to July 10, 2019. Order
23 Approving Stipulation, ECF No. 2377.

24 The third stipulation was requested by the Debtors and filed on June 24,
25 2019. ECF No. 2597. Wang Decl., ¶ 9. As a result of the third stipulation
26 requested by the Debtors, the hearing regarding the assumption and assignment of
27 the Medi-Cal Provider Agreement was continued to July 24, 2019. Order
28 Approving Stipulation, ECF No. 2606.

1 The fourth stipulation was requested by the Debtors and filed on July 3,
2 2019. ECF No. 2673. Wang Decl., ¶ 10. As a result of the fourth stipulation
3 requested by the Debtors, the hearing regarding the assumption and assignment of
4 the Medi-Cal Provider Agreement was continued to August 20, 2019. Order
5 Approving Stipulation, ECF No. 2686.

6 The fifth stipulation was requested by the Debtors and filed on August 5,
7 2019. ECF No. 2848. Wang Decl., ¶ 11. As a result of the fifth stipulation
8 requested by the Debtors, the hearing regarding the assumption and assignment of
9 the Medi-Cal Provider Agreement was continued to September 4, 2019. Order
10 Approving Stipulation, ECF No. 2879.

11 The sixth stipulation was requested by the Debtors and filed on August 19,
12 2019. ECF No. 2926. Wang Decl., ¶ 12. As a result of the sixth stipulation
13 requested by the Debtors, the hearing regarding the assumption and assignment of
14 the Medi-Cal Provider Agreement was continued to September 25, 2019. Order
15 Approving Stipulation, ECF No. 2928.

16 After eight months and many requested stipulations, Debtors made a
17 settlement offer on September 17, 2019. Wang Decl., ¶ 13.

18 **STATUTORY BACKGROUND**

19 **I. ADMINISTRATION OF THE MEDI-CAL PROGRAM**

20 The federal Medicaid Act, enacted in 1965 as title XIX of the Social Security
21 Act, is a federal-state administered Spending Clause program designed to provide
22 medical assistance to eligible low-income individuals. 42 U.S.C. § 1396a & b
23 (2019). The financing and administration of the Medicaid program are a
24 cooperative effort between the federal government and participating states, as
25 authorized under a federally approved State Medicaid Plan. Title 42 U.S.C.
26 § 1396a, et seq., authorizes federal financial support to states for medical assistance
27 provided to certain low-income persons. In California, this program is the
28 California Medical Assistance Program, which is commonly known as Medi-Cal.

1 Cal. Welf. & Inst. Code § 14063 (West 2019). The Department is the single state
2 agency authorized to administer the Medi-Cal program. Cal. Welf. & Inst. Code §
3 10740 (West 2019); Cal. Code Regs. tit. 22, § 50004(b)(1) (2019).

4 **II. MEDI-CAL FINANCING**

5 The costs of the Medicaid program are generally shared between states and
6 the federal government based on a set formula. 42 U.S.C. §§ 1396b(a) and
7 1396d(b) (2019). Except for certain covered populations or discrete service
8 expenditures specified in 42 U.S.C. §§ 1396b or 1396d, the federal government
9 reimburses medical assistance expenditures under California's State Medicaid Plan
10 at a rate of fifty percent. When the Department makes expenditures for medical
11 assistance covered under Medi-Cal, the Department claims the appropriate federal
12 share of those costs at the appropriate federal medical assistance percentage. *Id.*

13 The HQA Fee is a charge imposed by the Department on non-exempt
14 hospitals to finance the non-federal share of specified Medi-Cal costs. Cal. Welf. &
15 Inst. Code § 14169.51(*l*) (West 2019). The quarterly HQA Fee imposed upon non-
16 exempt hospitals has been collected by the Department in similar form since 2009.
17 The collected HQA Fees are used to support Medi-Cal expenditures and maximize
18 available federal participation for Medi-Cal costs. *See*
19 <http://www.lao.ca.gov/BallotAnalysis/Proposition?number=52&year=2016>.

20 **III. DELIVERY OF MEDI-CAL SERVICES**

21 The vast majority of Medi-Cal benefits are delivered through one of two
22 systems: (i) the fee-for-service system and (ii) the managed care plan system. Cal.
23 Welf. & Inst. Code § 14016.5(b) (West 2019). In the fee-for-service system, Medi-
24 Cal contracts with and pays health care providers (such as physicians, hospitals, and
25 clinics) directly for covered services provided to Medi-Cal beneficiaries. *Id.*,
26 § 14132 et seq. (West 2019).

27 The Department also administers Medi-Cal through various managed care
28 plans operated by public and private entities under contract pursuant to various

1 statutory authorities. *See generally* Cal. Welf. & Inst. Code §§ 14087.3-14089.8;
2 14200-14466. (West 2019). In the managed care system, the Department contracts
3 with managed care plans to provide the vast majority of covered services for
4 enrolled Medi-Cal beneficiaries within a fixed geographic location. *See generally*
5 *id.* at § 14087.3-14087.48 (setting forth standards governing contracts between the
6 Department and managed care providers) and § 14169.51(ab) (West 2019)
7 (defining “managed health care plan” for purposes of the HQA Fee program). The
8 Department develops and pays an actuarially sound (capitation) rate per Medi-Cal
9 beneficiary enrollee per month to contracted managed care plans. Cal. Welf. &
10 Inst. Code § 14301.1 (West 2019).

11 **IV. PAYMENTS TO HOSPITALS FOR MEDI-CAL SERVICES**

12 Hospitals may receive several types of payments based on their participation
13 in Medi-Cal, including direct payments from the Department, managed care
14 payments from managed care plans, and supplemental payments from both the
15 Department and managed care plans. <https://lao.ca.gov/ballot/2013/130602.aspx>.

16 Direct payments are payments to providers such as Debtor for providing
17 covered services to Medi-Cal beneficiaries through the fee-for-service system.
18 Managed care payments are payments from managed care plans to providers
19 (including hospitals such as Debtor) for services delivered to Medi-Cal
20 beneficiaries enrolled in these plans. The plans receive funds from the Department
21 to pay the providers. <https://lao.ca.gov/ballot/2013/130602.aspx>.

22 Quality assurance payments are supplemental payments, supported by the
23 HQA Fee revenue and federal matching funds, providing additional payments to
24 Medi-Cal hospitals to supplement the Department’s direct fee-for service payments
25 and the managed care plans’ payments to hospitals, including Debtor. Cal. Welf. &
26 Inst. Code § 14169.53(b) (West 2019).

27 ///

28

1 **V. HOSPITAL QUALITY ASSURANCE FEE**

2 California Assembly Bill 1383 established a program that imposed a
3 quarterly HQA Fee to be paid by non-exempt hospitals, which would be used to
4 increase federal financial participation in order to make supplemental payments to
5 hospitals including private hospitals (such as Debtors), and to help pay for health
6 care coverage for low-income children, for the period of April 1, 2009 through
7 December 31, 2010. The California Legislature extended the HQA Fee program
8 through December 31, 2016. Then, on November 8, 2016, California voters passed
9 Proposition 52 continuing the HQA Fee program indefinitely from January 1, 2017,
10 onward. *See* Cal. Const., art 16, § 3.5; [HTTP://WWW.DHCS.CA.GOV/
11 PROVGOVPART/PAGES/HOSPITALQUALITYASSURANCEFEEPROGRAM.ASPX.](http://www.dhcs.ca.gov/PROVGOVPART/PAGES/HOSPITALQUALITYASSURANCEFEEPROGRAM.ASPX)

12 More specifically, the Medi-Cal Hospital Reimbursement Improvement Act
13 of 2013 (the Act) extended the imposition of the HQA Fee from January 1, 2014,
14 through December 31, 2016. The Act was signed into law in October 2013 and is
15 codified at California Welfare and Institutions Code sections 14169.50 through
16 14169.76. It was later made permanent pursuant to Proposition 52. Cal. Const., art
17 16, § 3.5. The Act requires non-exempt hospitals to pay a quarterly HQA Fee,
18 which is assessed regardless of a hospital's participation in the Medi-Cal program.
19 Cal. Welf. & Inst. Code § 14169.52(a) (West 2019).

20 The purposes of the Reimbursement Improvement Act were to enable
21 California to obtain additional federal matching funds for its Medi-Cal program and
22 to increase access to care and hospital reimbursement. The purposes of the
23 Reimbursement Improvement Act are explicitly stated in California law:

24 The Legislature continues to recognize the essential role that hospitals
25 play in serving the Medi-Cal beneficiaries. To that end, it has been, and
26 remains, the intent of the Legislature to improve funding for hospitals
and obtain all available federal funds to make supplemental Medi-Cal
payments to hospitals.

27 Cal. Welf. & Inst. Code § 14169.50(a) (West 2019).
28

1 It is the intent of the Legislature that funding provided to hospitals
2 through a hospital quality assurance fee be continued with the goal of
3 increasing access to care and to improving hospital reimbursement
4 through supplemental Medi-Cal payments to hospitals.

5 Cal. Welf. & Inst. Code § 14169.50(b) (West 2013).

6 It is the intent of the Legislature to impose a quality assurance fee to be
7 paid by hospitals, which would be used to increase federal financial
8 participation in order to make supplemental Medi-Cal payments to
9 hospitals, and to help pay for health care coverage for low-income
10 children.

11 Cal. Welf. & Inst. Code § 14169.50(d) (West 2019).

12 **VI. REIMBURSEMENT OF MEDI-CAL OVERPAYMENTS**

13 Medi-Cal makes interim payments to an authorized Medi-Cal provider after
14 it renders services and submits claims to Medi-Cal for payment. The Department
15 later audits the claims for Medi-Cal payment submitted by Medi-Cal providers.

16 Cal. Welf. & Inst. Code §§ 14133 and 14170 (West 2019). In that regard, the
17 Department is statutorily authorized to audit and review a provider's cost report¹
18 within three years after the close of the period covered by the report, or after the
19 date of submission of the original or amended report by the provider, whichever is
20 later. Cal. Welf. & Inst. Code § 14170(a)(1) (West 2019).

21 If the audit indicates any overpayment, the provider must reimburse Medi-
22 Cal for the overpayment. The Department may begin liquidation of any
23 overpayment to a Medi-Cal provider sixty days after issuance of the first Statement
24 of Accountability or demand for repayment. Cal. Code Regs. title 22, § 51047
25 (2019).

26 **FACTUAL BACKGROUND**

27 **I. ST. VINCENT MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL**

28 St. Vincent Medical Center, as of September 24, 2019, has HQA Fee
liabilities for Phase V in the amount of **\$6,575,330.03**. Declaration of Hanh Vo in

¹ Cost reports and other data submitted by Medi-Cal providers are submitted to the Department for the purpose of determining reasonable costs for Medi-Cal services or establishing rates of Medi-Cal payment. Cal. Welf. & Inst. Code § 14170(a)(1) (West 2019).

1 Support of the Department's Motion to Stay (Vo Decl.) (filed concurrently with this
2 Motion), ¶¶ 3-8.

3 **II. SETON MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL**

4 Seton Medical Center, as of September 24, 2019, has outstanding HQA Fee
5 liabilities for Phase V in the amount of **\$16,714,870.24**. Vo Decl. (filed
6 concurrently with this Motion), ¶¶ 3-8.

7 **III. ST. FRANCIS MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL**

8 St. Francis Medical Center, as of August 23, 2019, has HQA Fee liabilities
9 for Phase V in the amount of **\$13,528,354.37**. Vo Decl. (filed concurrently with
10 this Motion), ¶¶ 3-8.

11 **IV. MEDI-CAL OVERPAYMENTS TO DEBTORS**

12 For July 1, 2016, through June 30, 2017, the Department's Audits Section –
13 Los Angeles of the Financial Audits Branch determined that St. Francis was
14 overpaid \$25,176,471 by Medi-Cal, which includes an overpayment recovery of
15 \$24,911,003. Declaration of Ginn Sampson 2, ECF No. 3124-1. For St. Francis,
16 there are cost reports for fiscal years 2017/18, 2018/19, and 2019/20, that still need
17 to be reviewed and/or audited by the Department.

18 Further, for July 1, 2016, through June 30, 2017, the Department has
19 determined, based on retroactive claim adjustments, that Seton Medical Center was
20 overpaid **\$4,205.25** by Medi-Cal for hospital operations. Vo Decl., ¶ 16, ECF No.
21 3043-1.

22 Also, St. Francis was overpaid by Medi-Cal in the amount of **\$662,327.67** in
23 supplemental reimbursements under the Supplemental Reimbursement for
24 Construction Renovation Reimbursement Program. See Declaration of Shiela
25 Mendiola, ECF No. 3043-2.

1 **V. DEBTORS CONTINUE AS MEDI-CAL PROVIDERS POST PETITION**

2 Since the Petition Date, Debtors have continued to provide Medi-Cal
3 services, have continued to submit claims to Medi-Cal for payment, and have
4 continued to receive Medi-Cal payments. In other words, despite their bankruptcy
5 filings, Debtors have remained in the Medi-Cal system, enjoying Medi-Cal provider
6 benefits, such as direct payments from the Department, managed care payments
7 from managed care plans, and supplemental payments from both the Department
8 and managed care plans.

9 **ARGUMENT**

10 **I. THE DEPARTMENT IS LIKELY TO SUCCEED ON THE MERITS OF THE
11 APPEAL**

12 The issue on appeal is whether Debtors' Medi-Cal Provider Agreements are
13 executory agreements that must be assumed and assigned. The Department
14 respectfully submits that it is likely to prevail on appeal. It has, at least, more than
15 a "fair chance" to succeed on the merits of its appeal, justifying a stay on the order
16 to allow the Debtors to sell the Medi-Cal Provider Agreements, free and clear of
17 interests.

18 **A. A Licensed Hospital's Application to Enroll in Medi-Cal
19 Must Be Approved Before the Hospital Can Provide Medi-
20 Cal Services and Receive Medi-Cal Payment Benefits**

21 A licensed hospital does not have a statutory right to become a Medi-Cal
22 provider, let alone a statutory right to bill Medi-Cal and receive Medi-Cal payment
23 benefits. As explained by California Welfare and Institutions Code section
24 14043.2, in order to enroll as a Medi-Cal provider, or for Medi-Cal provider
25 enrollment to continue, an applicant may be required to sign a provider agreement
26 and shall disclose all information as required in federal Medicaid regulations and
27 *any other information required by the Department* (emphasis added). Failure to
28 disclose the required information, or the disclosure of false information, would

1 result in denial by the Department of the application for enrollment. Cal. Welf. &
2 Inst. § 14043.2 (West 2019).

3 This Court, in fact, recognized the Medi-Cal Provider Agreement
4 requirement to receive Medi-Cal payment benefits in *Gardens*.

5 To become entitled to receive Medi-Cal payments for providing
6 treatment to Medi-Cal beneficiaries, the Debtor was required to enter
into a Provider Agreement with DHCS [Department].

7 *In re Gardens Regional Hospital and Medical Center, Inc. (Gardens)*, 569
8 B.R. 788, 796 (2017).

9 **B. Medi-Cal Provider Agreement, as an Executory Contract,
Demonstrates the Consideration for Each Contracting Party**

10 The Court assumed no consideration by the Debtors for the Medi-Cal
11 Provider Agreements because the Agreements, as the Court reasoned, merely state
12 the Debtors' pre-existing legal obligations. Mem. of Decision 6-7, ECF No. 3146.
13 An agreement to comply with applicable law, according to the Court, is a gratuitous
14 promise, which does not provide consideration to make a contract enforceable. *Id.*
15 7, ECF No. 3146. As a preliminary matter, the Court does not cite any specific
16 federal or state statutes or regulations from and for which the Medi-Cal Provider
17 Agreement provisions purportedly originate and restate. *Id.*

18 The Court's assumption fails because there is consideration by both parties.
19 As this Court recognized in *Gardens*, a Medi-Cal Provider Agreement entitles a
20 health care professional or entity to Medi-Cal payment benefits. However, the
21 Department, on behalf of Medi-Cal, does not have any pre-existing duty to
22 authorize any health care professional or entity to become Medi-Cal providers or
23 any pre-existing duty to execute the Medi-Cal Provider Agreement with any health
24 care professional or entity. Thus, the Department's agreement to execute the Medi-
25 Cal Provider Agreement with Debtors to authorize them to become Medi-Cal
26 Providers is sufficient consideration by the Department. There is also sufficient
27 consideration by the Debtors. Under the Agreements, Debtors receive the benefit
28 of being able to provide care to Medi-Cal beneficiaries and receive payment in the

1 tens of millions of dollars. Consequently, there is an exchange of consideration
2 sufficient to support the Department’s position that the Medi-Cal Provider
3 Agreements are enforceable contracts.

4 The Court’s assumption also fails given the parties’ consideration indicated
5 in the Medi-Cal Provider Agreements. The consideration includes the Debtors’
6 agreement to successor joint and several liability in order to be approved as Medi-
7 Cal providers and to receive Medi-Cal payment benefits. The consideration for
8 successor joint and several liability is emphasized by the following provision in the
9 Agreements:

10 Assignability. Provider agrees that it has no property right in or to its
11 status as a Provider in the Medi-Cal program or in or to the provider
12 number(s) assigned to it, and that Provider may not assign its provider
13 number for us as a Medi-Cal provider, or any rights and obligations it
has under this Agreement except to the extent purchasing owner is
joining this provider agreement with successor liability with joint and
several liability.

14 Ho Decl. ¶ 7, Ex. 5 at 8, ECF No. 3043-1.

15 To the Department’s knowledge, no federal or state statute or regulation
16 mandates joint and several successor liability by the purchasing owner. As such,
17 this significant provision was a condition imposed solely by the Department to
18 which the Debtors must agree in order to contract with the Department, for
19 enrollment in Medi-Cal, and for receipt of Medi-Cal payment benefits. As such,
20 there was consideration between the Department and the Debtors for the Medi-Cal
21 Provider Agreements to be enforceable contracts.

22 **C. Medi-Cal Provider Agreement, as an Executory Contract,**
23 **Demonstrates the Contracting Parties’ Mutual Obligations**

24 Executory contracts are those in which performance remains due from both
25 parties. *In re Holland Enterprises, Inc. (In re Holland)*, 25 B.R. 301 (Bankr. E.D.
26 N.C. 1982) (citing *In re Rovine Corp.*, 5 B.R. 402, 404 (W.D. Tenn. 1980).
27 This Court found that Medi-Cal Provider Agreements are not executory contracts
28 on the ground that the Agreements “impose no obligations upon the [Department].”

1 Mem. of Decision 6, ECF No. 3146. The Court adds that the “only obligations
2 spoken of in the Provider Agreements pertain to the Debtors” and that “even those
3 obligations do not constitute consideration for contract purposes, since they merely
4 state the Debtors’ pre-existing legal conditions.” *Id.* 6 -7, ECF No. 3146. The
5 Court’s ruling lacks merit and conflicts with its own rulings.

6 The Court’s ruling conflicts with its own analysis in *Gardens*, in which it
7 reasoned that “the Debtor executed a single Provider Agreement which governed
8 the obligations of the Debtor and the [Department] over the entire period of the
9 parties’ relationship.” *Gardens*, 569 B.R. at 798.

10 This Court mistakenly concludes that the Medi-Cal Agreement only
11 references the Debtors’ obligations. Mem. of Decision 6, ECF No. 3146. The
12 Department’s obligation to pay Debtors as Medi-Cal providers is, at least, implicit
13 in the Agreements. Paragraph 22 of the Agreement states that “payment received
14 from the [Department] shall constitute payment in full. Declaration of Hahn Vo,
15 Ex. 4, at 4, ECF No. 1353-1. Absent the Department’s obligation to pay, the
16 Debtors would not have entered into the Medi-Cal Provider Agreements. There
17 was no expectation that Debtors would provide free services to Medi-Cal
18 beneficiaries.

19 Also, the Department’s obligation to pay Medi-Cal providers, such as
20 Debtors, is incorporated by reference into the Agreements. The Agreement, if
21 unable to rely upon the shorthand of incorporation by reference, including the
22 Department’s obligations, “will swell in length from less than 10 pages to hundreds
23 of pages.” *Gardens*, 569 B.R. at 799. This is especially true given the fact that
24 hospitals that are Medi-Cal providers may receive several types of payments based
25 on their participation in Medi-Cal, including direct payments from the Department,
26 managed care payments from managed care plans, and supplemental payments
27 from both the Department and managed care plans.

28 <https://lao.ca.gov/ballot/2013/130602.aspx>.

1 **D. Case Law Affirms that Medi-Cal Providers Have No**
2 **Statutory Entitlement to Bill Medi-Cal**

3 Participation in Medi-Cal allows providers to continue to bill Medi-Cal for
4 services as well as receiving non-direct service payments, such as supplemental
5 payments that provide additional payments to Medi-Cal hospitals to supplement the
6 Department's direct fee-for service payments and the managed care plans'
7 payments to hospitals, including Debtor. Cal. Welf. & Inst. Code § 14169.53(b)
8 (West 2019).

9 This Court reasoned that the Medi-Cal Provider Agreements are akin to
10 licenses because Debtors have a statutory entitlement to provide services and to
11 receive reimbursement for such services. Memo. of Decision 8-9, ECF No. 3146.
12 The Court's analysis is unsupported because it only considers reimbursement for
13 services provided. As Medi-Cal Providers, Debtors receive supplemental payments
14 under the HQA Fee program, which have no direct relationship to the service
15 provided. Further, the Court ignores the fact that the disputed issue is about
16 whether the Debtors have any statutory entitlement to remain in Medi-Cal such that
17 they can transfer that right to the Buyer, SGM, through the sale, not whether
18 Debtors have any statutory entitlement to receive payment for services provided.
19 Debtors do not have any statutory right to remain as Medi-Cal providers.

20 In that regard, the Ninth Circuit and the Central District have held that Medi-
21 Cal providers do not have any ownership in their Medi-Cal provider status. Thus,
22 they do not have any statutory entitlement to continue to remain in Medi-Cal and to
23 continue to bill Medi-Cal, which is the intended consequence of the transfer of
24 Medi-Cal Provider Agreements from the Debtors to SGM.

25 In *Erickson v. United States Department of Health and Human Services*, the
26 district court granted an injunction to plaintiffs, a Medicare provider, to prohibit the
27 Secretary of Health and Human Services from excluding them from federally-
28 funded health care programs. On appeal, the Ninth Circuit followed the reasoning

1 of the First and Tenth Circuits in *Koerpel v. Heckler*, 797 F.2d 858, 863-65 (10th
2 Cir. 1986) and *Cervoni v. Secretary of Health, Education and Welfare*, 581 F.2d
3 1010 (1st Cir. 1978) and held that plaintiffs were not entitled to the continued
4 participation in Medicare/Medicaid programs. Plaintiffs failed to show entitlement,
5 including statutory entitlement, for continued participation in those programs;
6 therefore, they have no property interest in continued participation in those
7 programs. *Erickson v. United States Department of Health and Human Services*,
8 67 F. 3d 858, 862 (9th Cir. 1995).

9 Similarly, the California Court of Appeal in *Lin v. State of California*, 78
10 Cal. App. 4th 931 (Ct. App. 2012) held that providers of Medicare and Medicaid
11 services have no protected interests in continued participation in those programs.
12 *Id.*, at 935. Also, in *Millman v. English*, the Central District of California rejected a
13 Medi-Cal provider’s claim that he was deprived substantive due process interest in
14 his status as a provider and as a biller in Medi-Cal as a matter of law because, “a
15 person does not have a property interest in his continued participation” in Medicaid
16 programs. *Millman v. English*, 2010 WL 11545312, *7-8, (C.D. Cal. 2010). In fact,
17 the California Court of Appeal concluded that “the relationship between a Medi-Cal
18 provider and the Department is ‘contractual in nature.’” *Mednik v. State*
19 *Department of Health Care Services* 175 Cal. App. 4th 631, 642 (Ct. App. 2009).

20 Consistent with the analyses by the First, Ninth, Tenth Circuits, and the
21 Central District Court of California, Debtors’ Medi-Cal Provider Agreements
22 explicitly assert that no property interests exist in or to the providers’ status (such
23 that they can be sold as an asset under 11 U.S.C. § 363). Instead, the Agreements
24 expressly state that any rights or obligations associated with the Agreements, as
25 executory contracts, may only be assigned and assumed with successor liability.
26 *Vo Decl.*, Ex 5, ¶ 37, at 8, ECF No. 3043-1.

27 If a benefit is a “matter of statutory entitlement for persons qualified to
28 receive them,” a property interest in that benefit is created. *Goldberg v. Kelly*, 397

1 *U.S. 254, 262, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970)*. Property interest arises
2 from a statutory entitlement. *Southeast Kansas Community Action Program v.*
3 *Secretary of Agriculture of the United States*, 967 F.2d 1452, 1457 (10th Cir. 1992).
4 Food-stamp benefits are a matter of statutory entitlement for persons qualified to
5 receive them, and thus are appropriately treated as a form of “property.” *Atkin v.*
6 *Parker*, 472 U.S. 115, 128, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985). Statutory
7 entitlement of eligible veterans to receipt of educational assistance constitute a
8 property interest. *Devine v. Cleland*, 616 F. 2d 1080, 1086 (9th Cir. 1980). A state
9 issued license for the continued pursuit of the licensee’s livelihood creates a
10 property interest. *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d
11 90 (1971). Here, Debtors have no property interest in their Medi-Cal provider
12 status. Conversely, they do not have any statutory entitlement to bill Medi-Cal.

13 Accordingly, contrary to the Court’s analysis, the Medi-Cal Provider
14 Agreements do not provide Debtors with any statutory entitlement to continue to
15 remain in Medi-Cal and to continue to bill Medi-Cal, such that they can transfer
16 such purported statutory entitlement to the Buyer, SGM, through the sale. Mem. of
17 Decision 8, ECF No. 3146.

18 **E. *PAMC and Guzman Do Not Provide Debtors with a Statutory***
19 ***Right to Remain in Medi-Cal After the Sale***

20 The Court cites *PAMC, Ltd., v. Sebelius*, 747 F.3d 1214 (9th Cir. 2014) and
21 *Guzman v. Shewry*, 552 F.3d 941 (9th Cir. 2009) for the proposition that Medi-Cal
22 Provider Agreements are not contracts because, upon joining Medicare, the
23 hospitals receive a statutory entitlement, not a contractual right, to receive
24 reimbursement services provided. Mem. of Decision 5-6, ECF No. 3146.

25 The Court misinterprets and misapplies *Guzman*. That relevant principle
26 from that case is that a health care provider does not have a right to contract with
27 the governmental assistance programs, such as Medi-Cal. In *Guzman*, Guzman
28 argued that his temporary suspension denied him the ability to receive

1 reimbursement for treating Medi-Cal beneficiaries; thus, he had been deprived of
2 his right to contract with the State. *Guzman v. Shewry*, 552 F.3d at 954. Based
3 upon the alleged deprivation of his right to contract with the State, Guzman further
4 argued that he was deprived of his procedural guarantees of the Due Process
5 Clause. *Id.* Guzman analogized his temporary suspension to bar from government
6 contract bidding. *Id.*

7 The Court rejected the claimed liberty interest, ruling that one does not have
8 a right to contract with the State to participate in its government assistance
9 programs, “designed to provide benefits for a third party.” *Id.* It was only in the
10 context of whether Guzman had any guaranteed right to contract with the State that
11 the Ninth Circuit noted that Guzman was entitled to receive payment for the
12 services that he had already provided. *Guzman v. Shewry*, 552 F.3d at 955. Here,
13 the issue is not whether Debtors have any right to contract with Medi-Cal under the
14 Medi-Cal Provider Agreement. Rather, it is about whether Debtors’ Medi-Cal
15 Provider Agreements constitute executory contracts in the bankruptcy context.

16 As for *PAMC*, it is distinguishable from this case. In that case, the provider
17 failed to timely submit its quality data and was subject to a two percent reduction in
18 its annual payment update. *PAMC, Ltd., v. Sebelius*, 747 F.3d at 1216. The
19 Medicare agreement did not include any provision regarding this issue. *PAMC*
20 requested equitable relief. Secretary of Centers for Medicare and Medicaid
21 Services argued that she had published program procedures in the Federal Register
22 and on the QualityNet Exchange website. *Id.* To resolve the disputed issue, the
23 Ninth Circuit applied the regulatory scheme. The application of the regulatory
24 scheme to resolve a disputed issue, in *PAMC*, does not negate the contractual nature
25 of the Medi-Cal Provider Agreements.

1 **F. Debtors Cannot Sell Their Agreement Under 11 U.S.C. 363(f)**

2 Aside from the fact that Debtors have no property interests to continue to
3 participate in the Medi-Cal system, 11 U.S.C. § 363(f) does not allow Debtors to
4 sell their Agreements, as their property, free and clear of any debt or successor
5 liability. Under 11 U.S.C. § 363(f), property can be sold free and clear of any
6 interest in that property of an entity other than the estate, only if:

- 7 (1) applicable nonbankruptcy law permits sale of such property free
 and clear of such interest;
8 (2) such entity consents;
9 (3) such interest is a lien and the price at which property is to be
 sold is greater than the aggregate value of all liens on such
10 property;
11 (4) such interest is in bona fide dispute; or
12 (5) such entity can be compelled, in a legal or equitable proceeding,
 to accept a money satisfaction of such interest.

13 11 U.S.C. § 363(f).

14 Here, *Erickson* and the Medi-Cal Provider Agreements specify that Medi-Cal
15 providers, such as Debtors, have no ownership interest in their Medi-Cal provider
16 status. Given the binding Ninth Circuit precedent, the Order mistakenly applies a
17 broader definition of “interest . . . in property” to include “monetary obligations
18 arising from the ownership of the property.” Memo of Decision 9, ECF No. 3146.
19 Because the Debtors have no property ownership in their Medi-Cal provider status,
20 they cannot have any interest in monetary obligations attached to such status, to be
21 able to sell them free and clear of debt.

22 For the fifth criteria, the Department cannot be compelled to accept a money
23 satisfaction in exchange for its rights to prevent a sale of Debtors’ Medi-Cal
24 provider status or Debtors’ benefits, duties and obligations under the Agreements.
25 There is no evidence that the Department may be compelled for less than the full
26 payment of the debt. “By its express terms, Section 363(f)(5) permits lien
27 extinguishment if the trustee can demonstrate the existence of another mechanism
28 by which a lien could be extinguished without full satisfaction of the secured debt.”
In re Terrace Chalet Apartments, Ltd., 159 B.R. 821, 829 (E.D. Ill, 1993). This

1 especially holds true given the Department's right recoup the Debtors' Medi-Cal
2 debt on the Debtors' Medi-Cal Provider Agreements, even after the sale. *Gardens*,
3 569 B.R. at 794-800. SGM will assume Debtors' Medi-Cal Provider Agreements
4 after the sale. Equitable recoupment does not owe its legitimacy to anything in the
5 Bankruptcy Code. *Sims v. United States Dept. of Health and Human Services*, 224
6 F. 1008, 1011 (9th Cir. 2000). Accordingly, the Department, by equitable
7 recoupment, can and will recoup the Debtors' Medi-Cal debt on the Debtors' Medi-
8 Cal Provider Agreements, even after the sale. *Gardens*, 569 B.R. at 794-800.

9 Accordingly, Debtors cannot sell their Medi-Cal Provider Agreements, free
10 and clear of any debt under 11 U.S.C. § 363(f). The Agreements can only be
11 assumed and assigned with successor liability.

12 **II. THE DEPARTMENT WILL SUFFER IRREPARABLE INJURY ABSENT THE**
13 **STAY**

14 A stay is also necessary to prevent the Department's appeal from being
15 rendered moot by operation of 11 U.S.C. § 363(m). In such situations, courts
16 advise the creditor to seek a stay. Courts are cautious in applying equitable
17 mootness when a party has been diligent about seeking a stay. *In re Mortgages*
18 *Ltd.*, 771 F.3d 623, 628 (9th Cir. 2014).

19 There will be significant harm to the Medi-Cal program absent the requested
20 stay. Aside from the recovery of taxpayer money in Medi-Cal overpayments to
21 Debtors, the recovery of the HQA Fee debt will increase federal financial
22 participation in Medi-Cal and help pay for health care coverage for low-income
23 children. Cal. Welf. & Inst. Code § 14169.50 (d) (West 2019).

24 Once the estate funds are distributed to other creditors, it will be extremely
25 difficult, if not impossible, to subsequently recover those funds from those
26 creditors in order to pay the Department's claim on the Debtors' Medi-Cal Provider
27 Agreements. The distribution of the estate funds will alter the status quo.

28 To avoid any concerns regarding equitable mootness of the Department's

1 appeal, this Court should stay its order to authorize the sale of Medi-Cal Provider
2 Agreements, free and clear of interests.

3 **III. THERE WILL BE NO HARM TO OTHER INTERESTED PARTIES IF A**
4 **STAY IS GRANTED**

5 The Department only requests that the Court stay its order with regard to
6 whether Medi-Cal Provider Agreements are executory contracts and that funds be
7 set aside to cover the Debtors' HQA Fee debt and the current and future Medi-Cal
8 overpayments incurred by the Debtors, pending its appeal.

9 The only potential impact to creditors is a slight delay in distribution pending
10 the Department's appeal. However, the potential slight delay in distributed is far
11 outweighed by the significant harm to Medi-Cal, which provides health care
12 coverage to those in need, and to the individuals who rely upon it for medical
13 treatment.

14 **IV. THE REQUESTED STAY PROMOTES PUBLIC INTERESTS**

15 The state and federal interests in maintaining the integrity of Medi-Cal and
16 preserving limited resources for those in need justify a stay pending the
17 Department's appeal.

18 The maximum recovery, which is necessary to the proper functioning of the
19 Medi-Cal system, will be undermined if the Debtors are allowed to sell their Medi-
20 Cal Agreements free and clear of their debt to Medi-Cal and if the estate funds are
21 distributed during the pendency of the Department's appeal. Given that the
22 Department may face this question in many, if not the majority, of similar
23 bankruptcy cases, there is an added public benefit to assuring the prompt resolution
24 on appeal of the question of whether HQA Fees and other Medi-Cal debt are
25 subject to successor liability under the Medi-Cal Provider Agreement. Also, absent
26 the requested stay, the Department's appeal regarding an important public policy
27 and interest issue affecting public health, safety, and welfare will likely be rendered
28 moot by operation of 11 U.S.C. § 363(m).

1 **V. THIS COURT’S RULING WILL CAUSE SEVERE, NEGATIVE**
2 **RAMIFICATIONS**

3 Bankruptcy courts should not be a haven for wrongdoers. *In re Berg*, 230
4 F.3d 1165, 1167 (9th Cir. 2000); *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1107
5 (9th Cir. 2005). Similarly, bankruptcy courts should not be a mechanism through
6 which a debtor is allowed to receive more favorable treatment, one that is strictly
7 foreclosed for individuals or entities who are not in bankruptcy. Here, Medi-Cal
8 providers, by the operations of their Medi-Cal Provider Agreements, are required to
9 transfer their Agreements with successor joint and several liability. Yet, this
10 Court’s ruling would undermine that requirement and provide Debtors with
11 preferential treatment over Medi-Cal providers that are not in bankruptcy. Aside
12 from the law, as a matter of fairness and equity, Debtors should not be permitted to
13 divorce the benefits from the burdens of their Medi-Cal Provider Agreements.

14 As explained above, Medi-Cal makes interim payments to an authorized
15 Medi-Cal provider after it renders services and submits claims to Medi-Cal for
16 payment. The Department later audits the claims for Medi-Cal payment submitted
17 by Medi-Cal providers. Cal. Welf. & Inst. Code §§ 14133 and 14170 (West 2019).
18 The successor joint and several liability in the Medi-Cal Provider Agreements
19 comports with the nature and operations of the Medi-Cal system. A Medi-Cal
20 provider, such as Debtors, is only required to submit cost reports after the close of a
21 fiscal year. Accordingly, Debtors have yet to submit cost reports for the current
22 fiscal year to the Department under California Welfare and Institutions Code
23 section 14170, which ends in June 2020.

24 Absent successor joint and several liability and given the Court’s ruling to
25 authorize the Debtors to sell their Medi-Cal Provider Agreement free and clear of
26 the Department’s claims, the Department will be foreclosed from recovering any
27 Medi-Cal overpayments that are discovered after the sale solely because of the
28 operations of the Medi-Cal system relative to the timing of the bankruptcy

1 proceedings.

2 **VI. THE TERMS OF THE APA RELATED TO MEDI-CAL MUST BE STAYED**

3 Debtors and SGM cannot be allowed to divorce the benefits from the burdens
4 of the Medi-Cal Provider Agreements. Under the APA, SGM intends to “succeed
5 to the quality history associated with the . . . Medi-Cal provider agreements.” APA
6 § 8.7, ECF No. 1279. SGM should not allowed to assume the benefits of the Medi-
7 Cal Provider Agreements without assuming the burdens thereon. In addition, if
8 SGM does not assume the Debtors’ obligations under the Medi-Cal Provider
9 Agreements, it should be barred from receiving any Hospital Quality Assurance
10 Program payments (supplemental payments), after the sale, pursuant to the Debtors’
11 Medi-Cal Provider Agreements. APA § 1.9(j), ECF No. 1279. Similarly, under the
12 Court’s ruling, SGM must also be foreclosed from collecting on Debtors’ Medi-Cal
13 payment receivables after the sale. APA § 1.7(b), ECF No. 1279.

14 As a matter of equity, and as affirmed by this Court in *Gardens*, any Medi-
15 Cal debt and benefits on a Medi-Cal Agreement arise of the same transaction and,
16 thus, are subject to the Department’s recoupment. Thus, SGM should not be
17 allowed to divorce benefits of the Debtors’ Medi-Cal Provider Agreements from the
18 associated obligations thereon. In fact, any Medi-Cal payments on the Debtors’
19 Medi-Cal Provider Agreements, even after the sale, will be subject to the
20 Department’s recoupment for Medi-Cal debt incurred by the Debtors. *Gardens*,
21 569 B.R. at 794-800.

22 **CONCLUSION**

23 Given the foregoing, the Court should stay its ruling and order to authorize
24 the Debtors to sell their Medi-Cal Provider Agreements free and clear of the
25 Department’s claims for payment of the HQA Fee debt and reimbursement of the
26 Medi-Cal overpayments and the APA provisions that relate to SGM’s rights and
27 obligations on Debtors’ Medi-Cal Provider Agreements.

1 Dated: October 3, 2019

Respectfully submitted,

2

XAVIER BECERRA
Attorney General of California

3

JENNIFER M. KIM
Supervising Deputy Attorney General

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/s/ Kenneth K. Wang
KENNETH K. WANG
Deputy Attorney General

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Attorneys for Creditor
Department of Health Care Services

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1 XAVIER BECERRA
Attorney General of California
2 JENNIFER M. KIM
Supervising Deputy Attorney General
3 KENNETH K. WANG
Deputy Attorney General
4 State Bar No. 201823
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6217
6 Fax: (916) 731-2125
E-mail: Kenneth.Wang@doj.ca.gov
7 Attorneys for Creditor
California Department of Health Care Services

8
9 IN THE UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION
11

12
13 **In re:**
14
15 **VERITY HEALTH SYSTEM OF**
16 **CALIFORNIA, INC., et al.,**
17 Debtor and Debtors In
18 Possession.
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23
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CASE NO. 2:18-bk-20151-ER
**DECLARATION OF HANH VO IN
SUPPORT OF CREDITOR
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES'S
EMERGENCY MOTION FOR
THE ENTRY OF AN ORDER TO
STAY THE SALE OF MEDI-CAL
PROVIDER AGREEMENTS FREE
AND CLEAR OF INTERESTS
AND THE ASSET PURCHASE
AGREEMENT PROVISIONS
THAT RELATE TO BUYER
SGM'S RIGHTS AND
OBLIGATIONS UNDER
DEBTORS' MEDI-CAL
PROVIDER AGREEMENTS [ECF
NO. 3146]**

Hearing: TBD
Time: TBD
Courtroom: 1568
Judge Ernest M. Robles

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27
28 /x/ Affects All Debtors.
Affects Verity Health System of

- 1 California, Inc.
- 2 Affects O'Connor Hospital
- 3 Affects Saint Louise Regional Hospital
- 4 Affects St. Francis Medical Center
- 5 Affects St. Vincent Medical Center
- 6 Affects Seton Medical Center
- 7 Affects O'Connor Hospital Foundation
- 8 Affects Saint Louise Regional Hospital
- 9 Foundation
- 10 Affects St. Francis Medical Center of
- 11 Lynwood Foundation
- 12 Affects St. Vincent Foundation
- 13 Affects St. Vincent Dialysis Center,
- 14 Inc.
- 15 Affects Seton Medical Center
- 16 Foundation
- 17 Affects Verity Business Services
- 18 Affects Verity Medical Foundation
- 19 Affects Verity Holdings, LLC
- 20 Affects De Paul Ventures, LLC
- 21 Affects De Paul Ventures – San Jose
- 22 Dialysis, LLC,
- 23 Debtors and Debtors in
- 24 Possession.

15 I, Hanh Vo, declare:

16 1. I am currently a Staff Services Manager III, serving as Chief of the
17 General Collections Branch of the Third Party Liability and Recovery Division of
18 the California Department of Health Care Services (Department). I have been
19 employed by the Department since September 2007. In that capacity, I have
20 personal knowledge of the matters stated herein.

21 2. My responsibilities as Staff Services Manager III, Chief of the General
22 Collections Branch, include management oversight of all activities performed by
23 three collection units of the Department, the Quality Assurance Fee (QAF) Units A
24 & B, and the Overpayments Unit.

25 3. I have reviewed the attached Hospital Quality Assurance Fee (HQA
26 Fee) debt summaries for St. Vincent Medical Center, Inc., for St. Francis Medical
27 Center, and for Seton Medical Center, which were prepared and have been updated
28 at my direction.

1 4. The calculation of the HQA Fee debt for these three hospitals is based
2 upon the HQA Fee model.

3 5. The HQA Fee debt summaries are divided into six columns, which are
4 described below:

5 (A) FISCAL YEAR – This term refers to the fiscal year period. The
6 HQA Fee fiscal year is from July 1 through June 30.

7 (B) CYCLE (PERIOD) – This term refers to the period included under
8 each HQA Fee payment cycle. HQA Fee cycles for Medi-Cal fee-for-
9 service system are quarterly, and HQA Fee cycles for Medi-Cal
10 Managed Care system cover all or the portion of the fiscal year
11 included in the program phase.

12 (C) AMOUNT DUE – This term refers to the amount owed by the Debtor
13 as determined by the HQA Fee model.

14 (D) AMOUNT PAID – This term refers to the amount from the Debtor
15 applied to the AMOUNT DUE of a particular HQA Fee PERIOD.

16 (E) WITHHELD – This term refers to the amount collected through Medi-
17 Cal claims offset from the Debtor's Medi-Cal check writes and applied
18 to the AMOUNT DUE of a PERIOD.

19 (F) OUTSTANDING BALANCE – This term refers to the amount of the
20 HQA Fee debt that remains owed by the Debtor.

21 6 With regard to the noted amounts due for the Managed Care cycles,
22 the amounts stated are estimates and are subject to change based upon Medi-Cal
23 Managed Care utilization at the time of payment and fee liability from Medi-Cal
24 fee-for-service reconciliation activities of the prior program period.

25 7. Based upon my review of the attached HQA Fee debt summaries, I
26 certify that total amount of HQA Fee debt for St. Vincent Medical Center (NPI No.
27 1124004304 and OSHPD No. 106190762) for Phase V (January 1, 2017 through
28 June 30, 2019) is **\$6,575,330.03**, for Seton Medical Center (NPI No. 1154428688,

1 OSHPD No. 106410817) for Phase V is **\$16,714,870.24**, and for St. Francis
2 Medical Center (NPI No. 1487697215, OSPHD No. 106190754) for Phase V is
3 **\$13,528,354.37**.

4 8. A true and correct copy of the debt summaries for St. Vincent Medical,
5 Seton Medical Center and St. Francis Medical Center is attached to this declaration
6 as Exhibit 1.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on this 3rd day of October 2019, at Sacramento, California.

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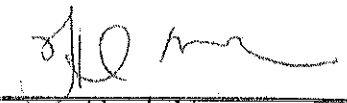
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Hanh Vo

EXHIBIT 1

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 09/24/2019)						
ST. FRANCIS MEDICAL CENTER (NPI# 1487697215) (OSHPD# 106190754)						
PHASE V		DUE DATE	AMOUNT DUE	AMOUNT PAID	WITHHELD	OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)					
2016/17	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	\$5,256,386.70	\$5,256,386.70	\$0.00	\$0.00
2017/18	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	\$5,324,520.88	\$5,324,520.88	\$0.00	\$0.00
	Managed Care 2 (Directed A) (07/01/2017-12/31/2017)	8/22/2019	\$3,466,549.00	\$3,466,549.00	\$0.00	\$0.00
	Managed Care 2* (Directed B) (01/01/2018-06/30/2018)	TBD	\$1,908,226.33	\$0.00	\$0.00	\$1,908,226.33
2018/19	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	\$6,703,466.00	\$0.00	\$6,703,466.00	\$0.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	\$6,703,466.00	\$6,703,466.00	\$0.00	\$0.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	\$6,520,041.59	\$6,520,041.59	\$0.00	\$0.00
	Managed Care 3* (Passthrough) (07/01/2018-06/30/2019)	TBD	\$5,810,064.02	\$0.00	\$0.00	\$5,810,064.02
	Managed Care 3* (Directed A) (07/01/2018-12/31/2018)	TBD	\$2,905,032.01	\$0.00	\$0.00	\$2,905,032.01
	Managed Care 3* (Directed B) (01/01/2019-06/30/2019)	TBD	\$2,905,032.01	\$0.00	\$0.00	\$2,905,032.01
Total Outstanding Balance						\$13,528,354.37

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 09/24/2019)						
ST. VINCENT MEDICAL CENTER (NPI# 1124004304) (OSHPD# 106190762)						
PHASE V		DUE DATE	AMOUNT DUE	AMOUNT PAID	WITHHELD	OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)					
2016/17	CYCLE 1 (01/01/2017-03/31/2017)	2/5/2018	\$2,967,293.00	\$0.00	\$2,967,293.00	\$0.00
	CYCLE 2 (04/01/2017-06/30/2017)	2/28/2018	\$2,967,293.00	\$0.00	\$2,967,293.00	\$0.00
	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	\$2,482,372.56	\$2,482,372.56	\$0.00	\$0.00
2017/18	CYCLE 3 (07/01/2017-09/30/2017)	3/21/2018	\$3,295,382.00	\$0.00	\$3,295,382.00	\$0.00
	CYCLE 4 (10/01/2017-12/31/2017)	4/11/2018	\$3,295,382.47	\$0.00	\$3,295,382.47	\$0.00
	CYCLE 5 (01/01/2018-03/31/2018)	5/2/2018	\$3,295,382.00	\$0.00	\$3,295,382.00	\$0.00
	CYCLE 6 (04/01/2018-06/30/2018)	7/11/2018	\$3,295,382.00	\$0.00	\$3,295,382.00	\$0.00
	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	\$2,560,919.99	\$2,560,919.99	\$0.00	\$0.00
	Managed Care 2 (Directed A) (07/01/2017-12/31/2017)	8/22/2019	\$1,667,296.00	\$1,667,296.00	\$0.00	\$0.00
	Managed Care 2* (Directed B) (01/01/2018-06/30/2018)	TBD	\$917,794.31	\$0.00	\$0.00	\$917,794.31
2018/19	CYCLE 7 (07/01/2018-09/30/2018)	10/3/2018	\$3,433,071.00	\$0.00	\$3,433,071.00	\$0.00
	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	\$3,433,071.00	\$0.00	\$3,433,071.00	\$0.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	\$3,433,071.00	\$3,433,071.00	\$0.00	\$0.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	\$3,342,337.51	\$3,342,337.51	\$0.00	\$0.00
	Managed Care 3* (Passthrough) (07/01/2018-06/30/2019)	TBD	\$2,828,767.86	\$0.00	\$0.00	\$2,828,767.86
	Managed Care 3* (Directed A) (07/01/2018-12/31/2018)	TBD	\$1,414,383.93	\$0.00	\$0.00	\$1,414,383.93
	Managed Care 3* (Directed B) (01/01/2019-06/30/2019)	TBD	\$1,414,383.93	\$0.00	\$0.00	\$1,414,383.93
Total Outstanding Balance						\$6,575,330.03

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 09/24/2019)

SETON MEDICAL CENTER (NPI# 1154428688) (OSHPD# 106410817)

PHASE V		DUE DATE	AMOUNT DUE	AMOUNT PAID	WITHHELD	OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)					
2016/17	CYCLE 1 (01/01/2017-03/31/2017)	2/5/2018	\$2,040,467.00	\$0.00	\$2,040,467.00	\$0.00
	CYCLE 2 (04/01/2017-06/30/2017)	2/28/2018	\$2,040,467.00	\$0.00	\$2,040,467.00	\$0.00
	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	\$1,870,925.10	\$1,870,925.10	\$0.00	\$0.00
2017/18	CYCLE 3 (07/01/2017-09/30/2017)	3/21/2018	\$2,223,369.00	\$0.00	\$1,568,582.89	\$654,786.11
	CYCLE 4 (10/01/2017-12/31/2017)	4/11/2018	\$2,223,368.94	\$0.00	\$0.00	\$2,223,368.94
	CYCLE 5 (01/01/2018-03/31/2018)	5/2/2018	\$2,223,369.00	\$0.00	\$0.00	\$2,223,369.00
	CYCLE 6 (04/01/2018-06/30/2018)	7/11/2018	\$2,223,369.00	\$0.00	\$0.00	\$2,223,369.00
	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	\$1,893,251.67	\$1,893,251.67	\$0.00	\$0.00
	Managed Care 2 (Directed A) (07/01/2017-12/31/2017)	8/22/2019	\$1,232,608.00	\$1,232,608.00	\$0.00	\$0.00
	Managed Care 2* (Directed B) (01/01/2018-06/30/2018)	TBD	\$678,512.26	\$0.00	\$0.00	\$678,512.26
2018/19	CYCLE 7 (07/01/2018-09/30/2018)	10/3/2018	\$2,293,835.00	\$0.00	\$0.00	\$2,293,835.00
	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	\$2,293,835.00	\$0.00	\$0.00	\$2,293,835.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	\$2,293,835.00	\$2,293,835.00	\$0.00	\$0.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	\$2,231,441.90	\$2,231,441.90	\$0.00	\$0.00
	Managed Care 3* (Passthrough) (07/01/2018-06/30/2019)	TBD	\$2,061,897.47	\$0.00	\$0.00	\$2,061,897.47
	Managed Care 3* (Directed A) (07/01/2018-12/31/2018)	TBD	\$1,030,948.73	\$0.00	\$0.00	\$1,030,948.73
	Managed Care 3* (Directed B) (01/01/2019-06/30/2019)	TBD	\$1,030,948.73	\$0.00	\$0.00	\$1,030,948.73
Total Outstanding Balance						\$16,714,870.24

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

1 XAVIER BECERRA
Attorney General of California
2 JENNIFER M. KIM
Supervising Deputy Attorney General
3 KENNETH K. WANG
Deputy Attorney General
4 State Bar No. 201823
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6217
6 Fax: (916) 731-2125
E-mail: Kenneth.Wang@doj.ca.gov
7 *Attorneys for Creditor*
California Department of Health Care Services

8
9 IN THE UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION
11

12
13 **In re:**

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15 **VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al.,**

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17 Debtor and Debtors In Possession.
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CASE NO. 2:18-bk-20151-ER

DECLARATION OF DEPUTY ATTORNEY GENERAL KENNETH K. WANG IN SUPPORT OF CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER TO STAY THE SALE OF MEDI-CAL PROVIDER AGREEMENTS FREE AND CLEAR OF INTERESTS AND THE ASSET PURCHASE AGREEMENT PROVISIONS THAT RELATE TO BUYER SGM'S RIGHTS AND OBLIGATIONS UNDER DEBTORS' MEDI-CAL PROVIDER AGREEMENTS [ECF NO. 3146]

26 Hearing: TBD
27 Time: TBD
28 Courtroom: 1568
Judge Ernest M. Robles

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/x/ Affects All Debtors.
Affects Verity Health System of California, Inc.
Affects O'Connor Hospital
Affects Saint Louise Regional Hospital
Affects St. Francis Medical Center
Affects St. Vincent Medical Center
Affects Seton Medical Center
Affects O'Connor Hospital Foundation
Affects Saint Louise Regional Hospital Foundation
Affects St. Francis Medical Center of Lynwood Foundation
Affects St. Vincent Foundation
Affects St. Vincent Dialysis Center, Inc.
Affects Seton Medical Center Foundation
Affects Verity Business Services
Affects Verity Medical Foundation
Affects Verity Holdings, LLC
Affects De Paul Ventures, LLC
Affects De Paul Ventures – San Jose Dialysis, LLC,

Debtors and Debtors in Possession.

I, Kenneth K. Wang, declare:

1. I am an attorney licensed to practice in the State of California and in the United States District Court, for the Central District of California. I am a Deputy Attorney General in the Health, Welfare, and Education Section of the Civil Division of the California Office of the Attorney General.
2. I represent Creditor California Department of Health Care Services (Department) in the instant jointly administered Chapter 11 cases.
3. I have personal knowledge of the matters and information stated herein.
4. On January 17, 2019, Debtors filed the Motion for an order (a) approving form of the APA for the Buyer and for prospective orders, (b) approving procedures related to the assumption of certain executory contracts and unexpired leases, and (c) to sell their property free and clear of any claims, liens, and

1 encumbrances. Motion, ECF No. 1279.

2 5. On January 25, 2019, the Department filed its objection to (1) Debtors'
3 motion for the entry of an order authorizing the sale of property free and clear of all
4 claims, liens, and encumbrances, and (2) approving form of Asset Purchase
5 Agreement. Dept.'s Objection, ECF No. 1353.

6 6. After the filing of the Department's Objection, Debtors requested
7 many stipulations to continue the hearing on the issue regarding the assumption and
8 assignment of their Medi-Cal Provider Agreements.

9 7. The first stipulation was filed on April 11, 2019. Stipulation, ECF No.
10 2125. As result of this stipulation requested by the Debtors, the hearing regarding
11 the assumption and assignment of the Medi-Cal Provider Agreement was continued
12 to June 5, 2019. Order Approving Stipulation, ECF No. 2153.

13 8. The second stipulation was requested by the Debtors and filed on May
14 13, 2019. Second Stipulation, ECF No. 2365. As a result of the second stipulation
15 requested by the Debtors, the hearing regarding the assumption and assignment of
16 the Medi-Cal Provider Agreement was continued to July 10, 2019. Order
17 Approving Stipulation, ECF No. 2377.

18 9. The third stipulation was requested by the Debtors and filed on June
19 24, 2019. Third Stipulation, ECF No. 2597. As a result of the third stipulation
20 requested by the Debtors, the hearing regarding the assumption and assignment of
21 the Medi-Cal Provider Agreement was continued to July 24, 2019. Order
22 Approving Stipulation, ECF No. 2606.

23 10. The fourth stipulation was requested by the Debtors and filed on July
24 3, 2019. Fourth Stipulation, ECF No. 2673. As a result of the fourth stipulation
25 requested by the Debtors, the hearing regarding the assumption and assignment of
26 the Medi-Cal Provider Agreement was continued to August 20, 2019. Order
27 Approving Stipulation, ECF No. 2686.

28 11. The fifth stipulation was requested by the Debtors and filed on August

1 5, 2019. Fifth Stipulation, ECF No. 2848. As a result of the fifth stipulation
2 requested by the Debtors, the hearing regarding the assumption and assignment of
3 the Medi-Cal Provider Agreement was continued to September 4, 2019. Order
4 Approving Stipulation, ECF No. 2879.

5 12. The sixth stipulation was requested by the Debtors and filed on August
6 19, 2019. Sixth Stipulation, ECF No. 2926. As a result of the sixth stipulation
7 requested by the Debtors, the hearing regarding the assumption and assignment of
8 the Medi-Cal Provider Agreement was continued to September 25, 2019. Order
9 Approving Stipulation, ECF No. 2928.

10 13. After eight months and many requested stipulations, Debtors made a
11 settlement offer on September 17, 2019.

12 14. The Department will suffer immediate and irreparable harm if the
13 requested stay is denied, which will result in tens of millions of taxpayer dollars
14 being dissipated and will negatively impact funding for and integrity of the Medi-
15 Cal system. Aside from the irreparable injury to the Medi-Cal system, including
16 Medi-Cal beneficiaries, the Department is likely to succeed on the merits of the
17 appeal. The Department has a “fair chance” of prevailing that the Medi-Cal
18 Provider Agreement is an executory contract that requires assumption and
19 assignment. Further, there will be no harm to other creditors if resolution of the
20 Medi-Cal Provider Agreement transfer issues is delayed. Lastly, a stay will
21 certainly promote public interests. Any money recovered by the Department will
22 safeguard the integrity of Medi-Cal and will result in additional federal matching
23 funds for Medi-Cal, which will benefit the public and promote public interests.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed on this 3rd day of October 2019, at Los Angeles, California.

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27
28

/s/ Kenneth K. Wang _____
Kenneth K. Wang

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: California Office of the Attorney General, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

A true and correct copy of the foregoing document entitled:

CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER TO STAY THE SALE OF MEDI-CAL PROVIDER AGREEMENTS FREE AND CLEAR OF INTERESTS AND THE ASSET PURCHASE PROVISIONS THAT RELATE TO BUYER SGM'S RIGHTS AND OBLIGATIONS UNDER DEBTORS' MEDI-CAL PROVIDER AGREEMENTS [ECF NO. 3146]

DECLARATION OF DEPUTY ATTORNEY GENERAL KENNETH K. WANG IN SUPPORT CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER TO STAY THE SALE OF MEDI-CAL PROVIDER AGREEMENTS FREE AND CLEAR OF INTERESTS AND THE ASSET PURCHASE PROVISIONS THAT RELATE TO BUYER SGM'S RIGHTS AND OBLIGATIONS UNDER DEBTORS' MEDI-CAL PROVIDER AGREEMENTS [ECF NO. 3146]

DECLARATION OF HANH VO IN SUPPORT CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER TO STAY THE SALE OF MEDI-CAL PROVIDER AGREEMENTS FREE AND CLEAR OF INTERESTS AND THE ASSET PURCHASE PROVISIONS THAT RELATE TO BUYER SGM'S RIGHTS AND OBLIGATIONS UNDER DEBTORS' MEDI-CAL PROVIDER AGREEMENTS [ECF NO. 3146]

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 3, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Lance N Jurich ljurich@loeb.com
David E Lemke david.lemke@wallerlaw.com
Bryan L Ngo bngo@fortislaw.com
Mary H Haas maryhaas@dwt.com

Mark A Neubauer mneubauer@carltonfields.com
Latonia Williams lwilliams@goodwin.com
Latonia Williams lwilliams@goodwin.com
Alicia K Berry Alicia.Berry@doj.ca.gov
Hutchison B Meltzer hutchison.meltzer@doj.ca.gov
Julie H Rome-Banks julie@bindermalter.com
Eric J Fromme efromme@tocounsel.com
Adam G Wentland awentland@tocounsel.com
Keith Patrick Banner kbanner@greenbergglusker.com
Brian L Davidoff bdavidoff@greenbergglusker.com
Eric J Fromme efromme@tocounsel.com
Adam G Wentland awentland@tocounsel.com
Kyrsten Skogstad kskogstad@calnurses.org
Michael B Reynolds mreynolds@swlaw.com
Debra Riley driley@allenmatkins.com
Elizabeth Berke-Dreyfuss edreyfuss@wendel.com
William M Rathbone wrathbone@grsm.com
Jeffrey C Wisler jwisler@connollygallagher.com
Rose Zimmerman rzimmerman@dalycity.org
Peter J Benvenuti pbenvenuti@kellerbenvenuti.com
Jane Kim jkim@kellerbenvenuti.com
Gregory R Jones gjones@mwe.com
Kyra E Andrassy kandrassy@swlawfirm.com
Stephen F Biegenzahn efile@sfblaw.com
Karl E Block kblock@loeb.com
Shawn M Christianson cmcintire@buchalter.com
Andy J Epstein taxcpaesq@gmail.com
Michael G Fletcher mfletcher@frandzel.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Lawrence B Gill lgill@nelsonhardiman.com
Gary E Klausner gek@lnbyb.com
Craig G Margulies Craig@MarguliesFaithlaw.com
Monserrat Morales mmorales@marguliesfaithlaw.com
Kevin H Morse kevin.morse@saul.com
Alan I Nahmias anahmias@mbnlawyers.com
Mark A Neubauer mneubauer@carltonfields.com
Abigail V O'Brient avobrient@mintz.com
Mark D Plevin mplevin@crowell.com
David M Poitras dpoitras@wedgewood-inc.com

Michael B Reynolds mreynolds@swlaw.com
Mary H Rose mrose@buchalter.com
Megan A Rowe mrowe@dsrhealthlaw.com
Rosa A Shirley rshirley@nelsonhardiman.com
Andrew Still astill@swlaw.com
Gary F Torrell gft@vrmlaw.com
Jason Wallach jwallach@ghplaw.com
Gerrick Warrington gwarrington@frandzel.com
Steven T Gubner sgubner@bg.law
Phillip K Wang phillip.wang@rimonlaw.com
Elan S Levey elan.levey@usdoj.gov
John Mark Jennings johnmark.jennings@kutakrock.com
Lisa M Peters lisa.peters@kutakrock.com
Marilyn Klinger MKlinger@smtldlaw.com
Cristina E Bautista cristina.bautista@kattenlaw.com
Marsha A Houston mhouston@reedsmith.com
Michael D Breslauer mbreslauer@swsslaw.com
Christopher J Petersen cjpetersen@blankrome.com
Mariam Danielyan md@danielyanlawoffice.com
Ivan L Kallick ikallick@manatt.com
Paul R. Glassman pglassman@sycr.com
Kyra E Andrassy kandrassy@swelawfirm.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Michael S Held mheld@jw.com
Michael St James ecf@stjames-law.com
M Douglas Flahaut flahaut.douglas@arentfox.com
Robert M Hirsh Robert.Hirsh@arentfox.com
Aram Ordubegian ordubegian.aram@arentfox.com
Sabrina L Streusand Streusand@slollp.com
Alan I Nahmias anahmias@mbnlawyers.com
Florice Hoffman fhoffman@socal.rr.com
Rosa A Shirley rshirley@nelsonhardiman.com
Ralph J Swanson ralph.swanson@berliner.com
Chris D. Kuhner c.kuhner@kornfieldlaw.com
James Cornell Behrens jbehrens@milbank.com
Jennifer L Nassiri jennifernassiri@quinnemanuel.com
Eric D Goldberg eric.goldberg@dlapiper.com
Monique D Jewett-Brewster mjb@hopkinscarley.com
Damarr M Butler butler.damarr@pbgc.gov
Lori A Butler butler.lori@pbgc.gov

Melissa T Ngo ngo.melissa@pbgc.gov
Marianne S Mortimer mmortimer@sycr.com
Sara Chenetz schenetz@perkinscoie.com
Simon Aron saron@wrslawyers.com
Richard A Lapping richard@lappinglegal.com
Mark A Serlin ms@swllplaw.com
Stephen F Biegenzahn efile@sfblaw.com
Paul J Laurinplaurin@btlaw.com
Ron Bender rb@lnbyb.com
Monica Y Kim myk@lnbrb.com
Emily P Rich erich@unioncounsel.net
Neal L Wolf nwolf@hansonbridgett.com
Steven G. Polard spolard@ch-law.com
David N Crapo dcrapo@gibbonslaw.com
Kevin M Eckhardt keckhardt@huntonak.com
Brian D Huben hubenb@ballardspahr.com
Latonia Williams lwilliams@goodwin.com
Mark A Neubauer mneubauer@carltonfields.com
Matthew S Walker matthew.walker@pillsburylaw.com
Lori L Purkey bareham@purkeyandassociates.com
Robert N Amkraut ramkraut@foxrothschild.com
Nathan A Schultz nschultz@foxrothschild.com
Darryl S Laddin bkrfilings@agg.com
Howard Camhi hcamhi@ecjlaw.com
John R OKeefe, Jr jokeefe@metzlewis.com
Paul J Pascuzzi ppascuzzi@ffwplaw.com
Jason D Strabo jstrabo@mwe.com
Aaron Davis aaron.davis@bryancave.com
Andrew J Ziaja aziaja@leonardcarder.com
Joseph A Kohanski jkohanski@bushgottlieb.com
Seth B Shapiro seth.shapiro@usdoj.gov
Alvin Mar alvin.mar@usdoj.gov
Hatty K Yip hatty.yip@usdoj.gov
Scott E Blakeley seb@blakeleyllp.com
Samuel R Maizel samuel.maizel@dentons.com
John A Moe, II john.moe@dentons.com
Tania M Moyron tania.moyron@dentons.com
Bruce Bennett bbennett@jonesday.com
Bruce Bennett bbennett@jonesday.com

Dustin P Branch branchd@ballardspahr.com
Matthew S Walker matthew.walker@pillsburylaw.com
Charles E Nelson nelsonc@ballardspahr.com
Michael Hogue hoguem@gtlaw.com
Thomas J Polis tom@polis-law.com
Lior Katz katzlawapc@gmail.com

2. SERVED BY UNITED STATES MAIL:

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 3, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

Melissa W Jones
Waller Lansden Dortch & Davis, LLP
511 Union St., Suite 2700
Nashville, TN 37219

Scott Schoeffel
THEODORA ORINGHER PC
535 Anton Boulevard, Ninth Floor
Costa Mesa, CA 92626-7109

Shawn C Groff
1330 Broadway Suite 1450
Oakland, CA 94612

Mollie Simons
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

Brent F Basilico
Sellar Hazard & Lucia
201 North Civic Dr., Ste. 145
Walnut Creek, CA 94596

Steven M Berman
101 E Kennedy Blvd., Ste. 2800
Tampa, FL 33602

Rachel C Quimby
Daglian Law Group APLC
701 N Brand Blvd Ste 610
Glendale, CA 91203

Phillip G Vermont
Randick O'Dea & Tooliatos LLP
5000 Hopyard Rd., Ste 225
Pleasanton, CA 94588

Margaret M Anderson
Fox Swibel Levin & Carroll LLP
200 West Madison St
Chicago, IL 60606

Ryan Schultz
Fox Swibel Levin & Carroll LLP
200 W. Madison Street
Suite 3000
Chicago, IL 60606

Schuyler Carroll
PERKINS COIE, LLP
30 ROCKEFELLER PLZ FL 22,
New York, New York 10111

Donald R Kirk
Carlton Fields
4221 W Boy Scout Blvd Ste 1000
Tampa, FL 33607

John Ryan Yant
Carlton Fields Jordan Burt, P.A.
4221 W Boy Scout Blvd, Ste. 1000
Tampa, FL 33607

John R O'Keefe, Jr.
Metz Lewis Brodman Must O'Keefe LLC
535 Smithfield St Ste 800
Pittsburgh, PA 15222
Nathan F Coco
McDermott Will & Emery
444 West Lake Street
Chicago, IL 60606-0029

Megan Preusker
McDermott Will & Emery
444 West Lake Street
Chicago, IL 60606-0029

Jason M Reed
Maslon LLP
90 S 7th St Ste 3300
Minneapolis, MN 55402

Clark Whitmore
Maslon LLP
3300 Wells Fargo Center
90 S 7th St
Minneapolis, MN 55402

Daniel S Bleck
Mintz, Levin, et al
One Financial Center
Boston, MA 02111

Ian A Hammel
Mintz Levin Cohn Ferris Glovsky & Popeo
One Financial Center
Boston, MA 02111

Paul J Ricotta
Mintz Levin Cohn Ferris Glovsky and Pope
Chrysler Center
666 Third Ave
New York, NY 10017

Sam J Alberts
DENTONS US LLP
1900 K Street NW
Washington, DC 20006

Benjamin Rosenblum
250 Vesey St
New York, NY 10281

William P Wassweiler
Ballard Spahr LLP
80 S Eighth St Ste 2000
Minneapolis, MN 55402

3. SERVED BY OVERNIGHT MAIL AND ELECTRONIC MAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 3, 2019**, I served the following persons and/or entities by overnight mail and electronic mail as follows.

Samuel Maizel, Esq. (on ECF)
Dentons US LLP
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017
Samuel.Maizel@dentons.com

Gregory A. Bray, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
gbray@milbank.com

Hatty Yip, Esq. (on ECF)
Office of the United States Trustee
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017
Hatty.Yip@usdoj.gov


4. SERVED BY PERSONAL DELIVERY: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 3, 2019**, I served the following persons and/or entities by personal delivery as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles
United States Bankruptcy Court
255 East Temple Street
Courtroom 1568
Los Angeles, CA 90012

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

October 3, 2019

Stacy McKellar



Date

Printed Name

Signature