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Debtors In Possession

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re  
11 VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,  
12 Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:  
CASE NO.: 2:18-bk-20162-ER  
CASE NO.: 2:18-bk-20163-ER  
CASE NO.: 2:18-bk-20164-ER  
CASE NO.: 2:18-bk-20165-ER  
CASE NO.: 2:18-bk-20167-ER  
CASE NO.: 2:18-bk-20168-ER  
CASE NO.: 2:18-bk-20169-ER  
CASE NO.: 2:18-bk-20171-ER  
CASE NO.: 2:18-bk-20172-ER  
CASE NO.: 2:18-bk-20173-ER  
CASE NO.: 2:18-bk-20175-ER  
CASE NO.: 2:18-bk-20176-ER  
CASE NO.: 2:18-bk-20178-ER  
CASE NO.: 2:18-bk-20179-ER  
CASE NO.: 2:18-bk-20180-ER  
CASE NO.: 2:18-bk-20181-ER

- 13  Affects All Debtors
- 14  Affects Verity Health System of California,  
15 Inc.
- 16  Affects O'Connor Hospital
- 17  Affects Saint Louise Regional Hospital
- 18  Affects St. Francis Medical Center
- 19  Affects St. Vincent Medical Center
- 20  Affects Seton Medical Center
- 21  Affects O'Connor Hospital Foundation
- 22  Affects Saint Louise Regional Hospital  
Foundation
- 23  Affects St. Francis Medical Center of Lynwood  
Foundation
- 24  Affects St. Vincent Foundation
- 25  Affects St. Vincent Dialysis Center, Inc.
- 26  Affects Seton Medical Center Foundation
- 27  Affects Verity Business Services
- 28  Affects Verity Medical Foundation
- Affects Verity Holdings, LLC
- Affects De Paul Ventures, LLC
- Affects De Paul Ventures - San Jose ASC,  
LLC

Chapter 11 Cases  
Hon. Judge Ernest M. Robles

**DEBTORS' OPPOSITION TO THE CALIFORNIA  
DEPARTMENT OF HEALTH CARE SERVICES'  
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  
[RELATES TO DOCKET NOS. 3146, 3211]**

Hearing Date and Time:  
Date: TBD  
Time: TBD  
Place: Courtroom 1568  
255 E. Temple St.  
Los Angeles, CA 90012

Debtors and Debtors In Possession.

DENTONS US LLP  
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1 Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors  
2 and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11  
3 bankruptcy cases (the “Cases”), file this opposition (the “Opposition”) to the California  
4 Department of Health Care Services’ (“DHCS”) request for an emergency hearing (the  
5 “Emergency Motion”) to consider the DHCS’ request for a stay pending appeal of the Court’s  
6 ruling (the “Ruling”) on the transfer of California Medical Assistance Program (“Medi-Cal”)   
7 Provider Agreements between the Debtors and DHCS (the “Provider Agreements”). In support  
8 of the Opposition, the Debtors respectfully request that the Court take judicial notice of the  
9 pleadings and filings in these Cases concerning the sale (the “SGM Sale”) of certain of the  
10 Debtors’ assets to Strategic Global Management, Inc. (“SGM”), and respectfully state as follows:

11 **I.**

12 **INTRODUCTION**

13 The Emergency Motion should be denied because DHCS has not shown that a hearing on  
14 48 hours’ notice is required. Indeed, the entire Emergency Motion is based on the incorrect  
15 assumption that the SGM Sale may close “as early as mid-October 2019.” As importantly, DHCS  
16 has not complied with the Local Bankruptcy Rules. DHCS did not submit a declaration  
17 supporting its critical and inaccurate assumption that the SGM Sale may close “as early as mid-  
18 October 2019.” *See* LBR 9075-1(a)(4). Rather, the record in these Cases demonstrate that the  
19 SGM Sale cannot close as quickly as alleged in light of the hearing set by the Court on the  
20 Debtors’ Enforcement Motion (defined below) on October 15, 2019. Further, the Emergency  
21 Motion does not “support the granting of the motion itself on the merits” because it merely  
22 recycles arguments for a stay pending appeal previously rejected by this Court. *See* LBR 9075-1  
23 (a)(4). Accordingly, the Debtors respectfully request that the Court deny DHCS’ request to  
24 consider the Emergency Motion on an expedited basis.

25 **II.**

26 **BACKGROUND FACTS**

27 **A. General Background**

28 1. On August 31, 2018, (“Petition Date”), the Debtors each filed a voluntary petition

1 for relief under chapter 11 of the Bankruptcy Code.<sup>1</sup> By entry of an order, the Cases are currently  
2 being jointly administered before the Bankruptcy Court. [Docket No. 17]. Since the  
3 commencement of their Cases, the Debtors have been operating their businesses as debtors in  
4 possession pursuant to §§ 1107 and 1108.

5 **B. The SGM Sale**

6 2. On January 17, 2019, the Debtors filed the *Debtors' Notice of Motion and Motion*  
7 *for the Entry of (I) an Order (i) Approving Form of Asset Purchase Agreement for Stalking Horse*  
8 *Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding*  
9 *Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to*  
10 *Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the*  
11 *Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory*  
12 *Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free*  
13 *and Clear of All Claims, Liens and Encumbrances* [Docket No. 1279] (the "Sale Motion"). In the  
14 Sale Motion, the Debtors sought an order granting, among other things, authority to sell certain  
15 property free and clear of claims, interests, and encumbrances, pursuant to §§ 363(b) and (f), to  
16 SGM.

17 3. On March 22, 2019, DHCS filed *Creditor California Department of Health Care*  
18 *Services's Objection to Notice of Counterparties to Executory Contracts and Unexpired Leases of*  
19 *the Debtors That May Be Assumed and Assigned* [Docket No. 1879] (the "Initial DHCS  
20 Objection"). In the Initial DHCS Objection, the DHCS argued that the Provider Agreements  
21 could not be sold to SGM free and clear of claims, interests, and encumbrances.

22 4. On April 10, 2019, the Debtors filed the *Debtors' Memorandum in Support of*  
23 *Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of all Claims, Liens and*  
24 *Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory*  
25 *Contracts and Unexpired Leases; and (C) Granting Related Relief* [Doc. No. 2115] (the "Sale  
26

27 <sup>1</sup> Unless otherwise noted, all references to "§" and "section" herein are to sections of the Bankruptcy Code; all  
28 references to "Bankruptcy Rules" are to provisions of the Federal Rules of Bankruptcy Practice; all references to  
"LBR" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central  
District of California.

1 Brief) in support of the Sale Motion.

2 5. On April 17, 2019, the Court held a hearing on the Sale Motion. On May 2, 2019,  
3 the Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to*  
4 *Strategic Global Asset Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and*  
5 *Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related*  
6 *Thereto; and (C) Granting Related Relief* [Docket No. 2306] (the "Sale Order").

7 **C. Facts Relevant to This Opposition**

8 6. Pursuant to the Sale Order, the Court granted the Sale Motion and continued the  
9 hearing the Initial DHCS Objection to determine whether the Sale Order effectuated a transfer of  
10 the Provider Agreements free and clear of claims, interests, and encumbrances. *See* Sale Order, ¶  
11 31 at 24-25. Further, the Court provided that "[n]othing in this Sale Order shall apply to Medi-  
12 Cal Provider Agreements until and unless there is a Court order approving a settlement between  
13 the Debtors and DHCS or a Court order resolving the DHCS's objections." *Id.* The Court set the  
14 continued hearing on June 5, 2019, at 4:00 a.m. (Pacific Time), which was ultimately continued  
15 to September 25, 2019, at 10:00 a.m. (Pacific Time) (the "Hearing"), by stipulation between the  
16 Debtors and DHCS. *See id.*; *see also* Docket Nos. 2278, 2377, 2606, 2686, 2856, 2928.

17 7. On September 11, 2019, the DHCS filed *Creditor California Department of*  
18 *Health Care Services's Supplemental Objection to (1) Debtors' Motion for Entry of an Order*  
19 *Authorizing the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2)*  
20 *Approving Form of Asset Purchase Agreement* [Docket No. 3043] (together with the Initial  
21 DHCS Objection, the "DHCS Objections").

22 8. On September 18, 2019, the Debtors filed the *Debtors' Reply to California*  
23 *Department of Health Care Services Objection to Debtors' Sale of Assets to Strategic Global*  
24 *Management* [Docket No. 3095] (the "Debtors' Reply"). On the same date, the Official  
25 Committee of Unsecured Creditors filed the *Official Committee of Unsecured Creditors' Reply to*  
26 *Creditor California Department of Health Care Services's Supplemental Objection to Sale*  
27 [Docket No. 3093] (the "Committee's Reply").

28 9. On September 25, 2019, at 10:00 a.m. (Pacific Time), the Court held the Hearing.

1 Appearances were as set forth on the record of the Hearing.

2 10. On September 26, 2019, the Court filed its *Memorandum of Decision Authorizing*  
3 *Debtors to Sell Medi-Cal Provider Agreements, Free and Clear of Interests Asserted by the*  
4 *California Department of Health Care Services, Pursuant to § 363(f)(5)* [Docket No. 3146] (the  
5 “Memorandum Decision”), which is fully incorporated herein by this reference.

6 11. After the Memorandum Decision, the Debtors drafted a proposed order  
7 memorializing the Court’s Ruling. The Debtors circulated the Draft Order to SGM and are  
8 addressing language requested by SGM.

9 12. On October 3, 2019, DHCS filed the Emergency Motion, which seeks a stay  
10 pending appeal of the Ruling on an emergency basis.

11 **III.**

12 **ARGUMENT**

13 DHCS’ Emergency Motion should be denied for the following three reasons. **First**,  
14 pursuant to Local Bankruptcy Rule 9075-1(a)(4)(C)(i), an emergency motion must, among other  
15 things, be “accompanied by the declaration of one or more competent witnesses under penalty of  
16 perjury” setting forth evidence that “justifies the setting of a hearing on less than 48 hours  
17 notice.” LBR 9075-1(a)(4)(C)(i). In the Emergency Motion, DHCS claims that emergency relief  
18 is necessary because “[t]he sale to SGM is expected to close as early as mid-October 2019.” *See*  
19 *Mot.* at 2. DHCS submitted two declarations in support of the Emergency Motion, neither of  
20 which address this alleged basis for expedited relief. Thus, there is no evidence in support of the  
21 Emergency Motion justifying a hearing on an emergency basis.

22 **Second**, the relief requested in the Emergency Motion is based on the incorrect  
23 assumption that the SGM Sale is expected to close “as early as mid-October 2019.” As the Court  
24 is aware, there is a hearing scheduled on October 15, 2019, at 10:00 a.m. (Pacific Time), on the  
25 Debtor’s emergency motion for an order enforcing the Sale Order and finding that the SGM Sale  
26 is free and clear of certain conditions imposed by the California Attorney General (“Enforcement  
27 Motion”). *See* Docket No. 3188. The SGM Sale cannot close prior to this hearing. *See* SGM  
28 APA § 8.6. Further, the SGM APA contemplates that SGM will have an evaluation period to

1 consider the effect of any order entered by the Court on the Enforcement Motion. *See id.*

2 **Third**, pursuant Local Bankruptcy Rule 9075-1(a)(4)(C)(ii), the motion must support “the  
3 granting of the motion itself on the merits.” LBR 9075-1(a)(4)(C)(ii). Here, DHCS does not  
4 satisfy the factors required for a stay pending appeal.

5 By way of example, DHCS bears the burden of showing that it will suffer irreparable  
6 harm to support its request for a stay pending appeal. DHCS argues only that its appeal will be  
7 mooted by § 363(m) if a stay is not granted. *See* Emergency Mot. at 20-21. However, in the  
8 context of bankruptcy cases, a majority of courts have concluded that the explicit **statutory policy**  
9 of mootness does not demonstrate irreparable injury. *See, e.g., Ohanian v. Irwin (In re Irwin)*,  
10 338 B.R. 839, 853 (E.D. Cal. 2006) (“It is well settled that an appeal being rendered moot does  
11 not itself constitute irreparable harm.”); *In re Red Mountain Mach. Co.*, 451 B.R. 897, 908-09  
12 (Bankr. D. Ariz. 2011) (internal citations omitted) (“[T]he law is clear in the Ninth Circuit that  
13 irreparable injury cannot be shown solely from the possibility that an appeal may be moot.”); *In*  
14 *re Convenience USA, Inc.*, 290 B.R. 558, 563 (Bankr. M.D.N.C. 2003) (stating that “a majority of  
15 the cases which have considered the issue have found that the risk that an appeal may become  
16 moot does not, standing alone, constitute irreparable injury” and citing cases).

17 Further, with regard to the “likelihood of success on the merits of the appeal” factor,  
18 DHCS merely recycles the arguments already rejected by the Court. By way of example, with  
19 regard to DHCS’s argument that the Medi-Cal Provider Agreement constitutes a contract because  
20 it imposes obligations on DHCS, DHCS still cannot point to a single provision in that document  
21 which establishes an obligation of DHCS to do anything. That is not surprising, because all of  
22 DHCS’s obligations arise by statute or regulations, a point that DHCS cannot rebut. Thus, the  
23 Emergency Motion does not comply with Local Bankruptcy Rule 9075-1(a)(4)(C)(ii).

24 **IV.**

25 **RESERVATION OF RIGHTS**

26 This Opposition relates solely to DHCS’s request for expedited relief in the Emergency  
27 Motion. The Debtors do not believe that DHCS has demonstrated an adequate basis for a stay  
28 pending appeal of the Ruling and reserve all rights with respect to such arguments. Accordingly,

