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7 Debtors In Possession

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

9 In re

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

13 Affects All Debtors

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

25 Debtors and Debtors In
26 Possession.

Lead Case No. 18-20151-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

Chapter 11 Cases
Hon. Ernest M. Robles

**DEBTORS' REPLY TO RESPONSE FILED BY
THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO THE MOTION
TO APPROVE TERMS AND CONDITIONS OF
A PRIVATE SALE OF CERTAIN OF THE
DEBTORS' ASSETS RELATED TO SETON
MEDICAL CENTER TO AHMC
HEALTHCARE INC.
[Related Docket Nos. 4360, 4528, 4561, 4600]**

Hearing:
Date: April 22, 2020
Time: 10:00 a.m.
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

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1 Verity Health System of California, Inc., a California nonprofit benefit corporation and the
2 Debtor herein (“VHS”), and the above-referenced affiliated debtors, the debtors and debtors in
3 possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the
4 “Cases”), hereby file this reply (“Reply”) in support of the Debtors’ *Motion to Approve Terms of A*
5 *Private Sale of Certain of the Debtors’ Assets Related to Seton Medical Center to AHMC*
6 *Healthcare Inc.* [Docket No. 4360] (the “Motion”)¹ and in response to the *Official Committee of*
7 *Unsecured Creditors’ Response to the Debtors’ Motion to Approve Private Sale of Seton Medical*
8 *Center to AHMC Healthcare Inc.* [Docket. No. 4528] (the “Response”) filed by the Official
9 Committee of Unsecured Creditors (the “Committee”). In reply to the Committee’s Response and,
10 in further support for the relief sought by the Motion, the Debtors respectfully state as follows:

11 I.

12 **INTRODUCTION**

13 The Committee’s Response offers a willfully naïve view of the GMC Seton Offer and
14 ignores the substantial discount the Debtors correctly place on any offer from SGM or its affiliates.
15 Although paying lip service to the “past actions of SGM and KPC,” the Committee takes at face-
16 value the proposed purchase price in the GMC Seton Offer in its unsubstantiated claim that GMC
17 “would bring *significantly* more funds into the estate than the offer from AHMC.” *See* Response
18 at 2 (emphasis in original). The Committee’s casual willingness to entertain the GMC Seton Offer
19 (if its five conditions are satisfied) is a reversal from its recent observation that “SGM’s actions in
20 these bankruptcy cases have indeed saddled SGM with a rather shallow reservoir of goodwill.” *See*
21 Docket No. 3963 at 3. Nowhere in the short Response does the Committee critically engage with
22 the detailed record of SGM’s misconduct in these Cases, the ongoing financial fallout from SGM’s
23 failure to close the SGM Sale, the subsequent litigation and appeals, or the evidence supporting the
24 Debtors’ careful exercise of business judgment in concluding that SGM is not “a trustworthy,
25 believable or a capable or reliable business partner.” *See* Adcock Decl. at ¶ 12. Although the
26 Committee may be willing to entertain an offer from GMC if the Committee’s conditions are met,

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28 _____
¹ Capitalized terms not defined in this Reply shall have the meaning ascribed to them in the Motion.

1 the Debtors cannot under the circumstances of these Cases. Nor are the Debtors aware of any other
2 constituent group that supports the GMC Seton Offer.

3 Approval of the Seton Sale with AHMC—a reliable and successful California hospital
4 operator—will maximize value for the Debtors’ estates by offering the Debtors finality, stability,
5 and an expeditious resolution to these Cases. For similar reasons, the medical staff of Seton (the
6 “Medical Staff”) support the “stability and certainty of a prompt private sale to AHMC” so that
7 they may refocus their attention to the critical work at hand in the fight against the COVID-19
8 pandemic; the National Union of Healthcare Workers (the “NUHW”) also urge the Court to approve
9 a prompt Sale to AHMC. To that end, the Sale will further the Debtors’ charitable mission by
10 ensuring the Seton Facilities’ communities have continued access to high-quality patient care
11 during this unprecedented time. For the reasons set forth more fully herein and in the Debtors’
12 Motion, the Debtors respectfully request that the Court overrule the Committee Response and
13 approve the Sale to AHMC.

14 **II.**

15 **RELEVANT FACTUAL BACKGROUND²**

16 **A. The Motion to Approve the Sale**

17 1. On March 29, 2020, the Debtors filed the Motion for the entry of an order:
18 (i) approving a private sale (the “Sale”) of certain assets (the “Purchased Assets”) of Debtors Seton,
19 Verity Holdings, LLC (“Holdings”), and VHS (together with Seton and Holdings, the “Sellers”) to
20 AHMC Healthcare Inc. (“AHMC”); (ii) approving the asset purchase agreement (the “APA”) and
21 ancillary documents attached to the Motion as Exhibit “A” by and between the Sellers and AHMC;
22 (iii) approving procedures related to the assumption and assignment of the Assigned Contracts and
23 Assigned Leases, together with the payment of Cure Costs (as such terms are defined in the
24 Motion); (iv) waiving any stay of the effectiveness of such order; and (v) granting such other and
25 further relief as is just and appropriate under the circumstances.

26 2. The Motion seeks approval of the Sale to AHMC following more than 20 months of
27 marketing and sales process that, ultimately, resulted in a single viable bidder for the Purchased
28

² The Debtors incorporate by this reference the factual background set forth in the Motion.

1 Assets. *See* Mot. at 10. Following the most recent marketing process, the Debtors negotiated the
2 APA with AHMC, which the parties agreed would proceed by private sale. *See id.*; *see also id.* Ex.
3 A (APA).

4 3. The Motion further sets forth the Debtors’ detailed arguments in support of the Sale
5 to AHMC and the Debtors’ exercise of business judgment in determining that the GMC Seton Offer
6 is subject to significant and unacceptable risks. These arguments and evidence in support of the
7 Motion, which have not been challenged, are incorporated herein by this reference.

8 **B. The Committee’s Response**

9 4. On April 10, 2020, the Committee filed a two page Response, without any evidence,
10 alleging that the GMC Seton Offer “would bring *significantly* more funds into the estate” than the
11 proposed AHMC Sale. Response at 2 (emphasis in original). After showcasing the allegedly higher
12 GMC Seton Offer, the Committee itself recognizes that for the Debtors to even be expected to
13 engage, GMC would still need to meet five conditions. *See id.* at 3. The foregoing, alone, undercuts
14 the Committee’s allegation that the GMC Seton Offer would generate more funds for the Debtors’
15 estates. The Committee provides no explanation as to why GMC’s satisfaction of these five
16 conditions would warrant consideration of the offer or why the Committee has the ability (or
17 authority) to select the conditions that might satisfy the Debtors. By way of example, from the
18 Debtors’ perspective, SGM’s agreement not to use facts from a Seton sale in the Adversary
19 Proceeding to limit damages is a minimum expectation of any good faith offer rather than one of
20 five top concessions.

21 5. As importantly, the Committee makes a single, passing reference to “the past actions
22 of SGM and KPC in these bankruptcy cases” in connection with the SGM Sale, but avoids any
23 discussion of the implications of SGM’s past conduct on the viability of the GMC Seton Offer. *See*
24 *id.* The Committee hypothesizes that “the Debtors (and other parties in interest) [would] consider
25 an auction involving GMC” if GMC revises the GMC Seton Offer to meet five conditions fabricated
26 by the Committee. *Id.* at 3. Despite having retained its own financial experts, as noted above, the
27 Committee submits no evidence in support of its reasoning that satisfaction of the proposed
28 conditions would render the GMC Seton Offer more financially viable than the AHMC APA.

1 Further, the Committee makes no effort to describe its proposed auction process or the impact of
2 such delay—e.g., “scheduling an auction,” negotiating an APA, and persuading AHMC to remain
3 engaged in such process—on the economics of the proposed transaction. *See id.* at 4 (requesting
4 that the Court “schedule an auction and permit GMC to bid on the Seton Assets if and only if the
5 five conditions set forth above have been satisfied to the Debtors’ satisfaction”). The monthly
6 operating losses Seton would incur during this timeframe are well-documented and uncontroverted.

7 **C. The Seton Medical Staff Reply**

8 6. On April 14, 2020, the Medical Staff³ filed the *Reply by the Seton Medical Staff in*
9 *Support of the Sale Motion* [Docket No. 4561] (the “Medical Staff Reply”). In the Medical Staff
10 Reply, the Medical Staff request that the Court grant the Motion, which would provide the Medical
11 Staff “the stability and certainty of a prompt sale to AHMC” as they continue their fight “on the
12 front lines of the COVID-19 war.” *See* Medical Staff Reply at 1, 2. The Medical Staff urge the
13 prompt closure of the AHMC Sale. Further, the Medical Staff submitted declarations [Docket Nos.
14 4413] in support of the Sale to AHMC and noted that the prospect of an auction process involving
15 SGM would be “intolerable.” *See* Medical Staff Reply at 1. Specifically, the Medical Staff warned
16 that “SGM was a fundamentally flawed and problematic choice as a prospective hospital operator.”

17 **D. The NUHW Statement**

18 7. On April 17, 2020, the Medical Staff submitted a letter [Docket No. 4600] (the
19 “NUHW Statement”) from NUHW at Seton echoing the concerns raised by the Medical Staff that
20 “have been on a rollercoaster of anxiety.” *See* NUHW Stmt. at 3 The NUHW urges “the court to
21 consider the Seton community and rule for the stability and certainty of a prompt private sale to
22 AHMC, a capable and responsible hospital operator.” *Id.* at 4. The NUHW also cautions against
23 engaging with SGM and recounts that SGM caused “tremendous damage” when it “maneuvered to
24

25 ³ The Medical Staff is a separate entity under California law, 22 California Code of Regulations §
26 70703, composed of physicians, and responsible for, among other things, the adequacy and quality
27 of care rendered to patients by a hospital, as well as evaluation of physicians, credentialing, and
28 medical records. As such, its opinion on which entity is most likely to enable the hospital to
continue the charitable mission of providing healthcare to the community should be given
significant weight by the Court.

1 force a sale price that was lower than their own bid, moving past the eleventh hour and resetting
2 the clock for when they would take over operations. *Id.* at 3, 4.

3 **III.**

4 **ARGUMENT**

5 **A. The Committee Does Not Challenge Any of the Evidence or Argument in Support of**
6 **the Motion and the Substantial Benefits of the AHMC Sale.**

7 As set forth more fully in the Motion, the Sale should be approved because the unrebutted
8 evidence demonstrates that the Debtors have appropriately exercised their “business judgment.” A
9 sale outside of the ordinary course should be approved under § 363⁴ if the Debtors “demonstrate
10 that such disposition has a valid business justification.” *In re 240 N. Brand Partners, Ltd.*, 200
11 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *see also In re Genco Shipping & Trading Ltd.*, 509 B.R. 455,
12 464 (Bankr. S.D.N.Y. 2014) (“The standard used for judicial approval of the use of estate property
13 outside of the ordinary course of business is also the business judgment of the debtor.”). The
14 business judgment standard is satisfied if the Debtors demonstrate, among other factors, that they
15 acted on an informed basis, in good faith and in the honest belief that the action taken was in the
16 best interests of the estate. *See In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D.
17 Cal. 1991); *In re Kellogg-Taxe*, No. 2:12-bk-51208-RN, 2014 WL 1016045, at *4 (Bankr. C.D.
18 Cal. Mar. 17, 2014). “Courts are loath to interfere with corporate decisions absent a showing of
19 bad faith, self-interest, or gross negligence . . . [and] will uphold the board’s decisions as long as
20 they are attributable to any rational business purpose ***Parties opposing the proposed exercise***
21 ***of a debtor’s business judgment have the burden of rebutting the presumption of validity.***” *Genco*
22 *Shipping & Trading Ltd.*, 509 B.R. at 464 (quoting *In re Integrated Res., Inc.*, 147 B.R. 650, 656
23 (Bankr. S.D.N.Y. 1992)) (emphasis added; quotations omitted).

24 The Committee makes no effort to rebut the evidence supporting the Debtors’ thorough
25 marketing process or the selection of the AHMC offer. In the Motion, the Debtors detailed the

26 _____
27 ⁴ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11
28 U.S.C. §§ 101-1532, and all “Rule” references are to the Federal Rules of Bankruptcy Procedure.
All references to “LBR” are to the Local Bankruptcy Rules of the United States Bankruptcy Court
for the Central District of California.

1 substantial marketing efforts for the Purchased Assets prepetition, *see* Prior Moloney Decl. at ¶ 4,
2 following the Petition Date, *see id.* at ¶¶ 5-6, and again following the failure of the SGM Sale, *see*
3 Moloney Decl. at ¶¶ 5-6. The Debtors ultimately negotiated the AHMC APA after receiving no
4 other qualified offers for the Purchased Assets. *See* Moloney Decl. at ¶ 6. Although the Debtors
5 received unsolicited offers from SGM and GMC, as disclosed in the Motion, *see id.* at ¶ 7, the
6 Debtors determined that the offers were subject to significant and unacceptable risks, *see* Adcock
7 Decl. at ¶¶ 12-13. In fact, the Committee concedes that the GMC Seton Offer as drafted is not a
8 qualified offer for the Purchased Assets. *See* Committee Response at 3 (noting that “the Debtors
9 could not be expected to engage on GMC’s Offer” unless modified).

10 The Committee does not challenge the Debtors’ detailed consideration of the AHMC offer
11 or the Debtors’ conclusion that the AHMC APA presents substantial benefits to the Debtors’ estates.
12 *See, e.g.,* Mot. at 10-11, Adcock Decl. at ¶ 10. As set forth more fully in the Motion, the AHMC
13 APA will, among other things, (i) result in the Debtors’ estates receiving \$40 million in cash
14 consideration, plus an amount equal to cure costs, (ii) preserve ongoing employee and trade vendor
15 relationships at the Seton Facilities, (iii) allow the Debtors to retain certain accounts receivable,
16 QAF Program payments, and disproportionate share funding, (iv) minimize the risk of remediation
17 claims, and (v) serve the Debtors’ charitable mission by transferring the Seton Facilities to an
18 operator with a proven history of rehabilitating and operating hospitals. *See id.* Further, the
19 Medical Staff and the NUHW support the prompt approval of the Sale to AHMC. *See* Medical
20 Staff Reply at 2, NUHW Stmt. at 4.

21 The AHMC APA is not simply a bird in the hand (which, alone, is more than can be said of
22 the GMC Seton Offer). *See In re 160 Royal Palm, LLC*, 600 B.R. 119, 129 (Bankr. S.D. Fla. 2019)
23 (approving sale where “Debtor has taken the ‘bird in hand’ approach in accepting the LR offer”).
24 The AHMC APA offers substantial benefits to the Debtors, their estates, and stakeholders that are
25 thoroughly documented in the Motion and support the conclusion that the Debtors have exercised
26 their business judgment in requesting approval of the Sale to AHMC. The Committee’s Response
27 should be overruled for its failure—and inability—to rebut evidence satisfying the requirements to
28 approve the Sale.

1 **B. The Committee’s Unsupported Conclusions Concerning the GMC Seton Offer or the**
2 **Need for an Auction Process Should Be Rejected.**

3 The Committee recommends fundamentally altering the Debtors’ private sale process based
4 solely on the Committee’s suppositions concerning the GMC Seton Offer. The Committee does
5 not cite a single case and presents no evidence in support of its position and attempts to
6 inappropriately substitute its own judgment for that of the Debtors. The Committee’s position is
7 flawed for at least three reasons.

8 ***First***, the Committee claims—without support or analysis—that the GMC Seton Offer will
9 result in a significant recovery to the Debtors’ estates that would exceed the expected recovery
10 under the AHMC sale by “more than 50%.” *See* Response at 2. The Committee does not provide
11 any analysis of the transaction risks associated with the GMC Seton Offer that would decrease its
12 relative value. By way of example, the Committee does not challenge the Debtors’ conclusion that
13 the GMC Seton Offer “yielded negative value given the risk that SGM, or its affiliate GMC, will
14 not close, the foregoing operating losses that would be incurred during the regulatory review and
15 approval of the sale, and the risk of a tax remediation issue arising from the assumption of
16 liabilities.” *See* Chadwick Decl. at ¶ 6. In particular, a material aspect of the GMC Seton Offer is
17 the assumption of the PTO obligations and Seton PACE Bond as consideration for the real property,
18 including the building improvements and equipment financed with the proceeds of the tax exempt
19 2005 Bonds. *See* Adcock Decl. at Ex. 1 (GMC Seton Offer). The Committee does not challenge
20 the reasonableness of the Debtors’ desire for an all cash sale. The GMC Seton Offer is not an “all
21 cash” offer and, in the Debtors’ expressed business judgment, exposes the Debtors to a material and
22 unacceptable risk of tax remediation claims. The uncontroverted evidence demonstrates that the
23 face value of the GMC Seton Offer is subject to substantial downward adjustment that the
24 Committee’s summary analysis does not address.

25 ***Second***, the Committee fixates solely on the face value of the GMC Seton Offer without
26 regard to the Debtors’ obligation to select the highest ***and best*** offer for the Purchased Assets. The
27 Committee ignores the cases cited in the Motion recognizing that “a ‘highest’ bid is not always the
28 ‘highest and best’ bid. The inclusion of ‘best’ in that conjunction is not mere surplusage.” 160

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1 *Royal Palm, LLC*, 600 B.R. at 129 (citing *In re Bakalis*, 220 B.R. 525, 532 (Bankr. E.D.N.Y. 1998));
2 *In re Diplomat Constr., Inc.*, 481 B.R. 215, 218–19 (Bankr. N.D. Ga. 2012) (“The highest bid does
3 not always equate to the best bid for the estate.”); *In re Gulf States Steel, Inc. of Al.*, 285 B.R. 497,
4 516 (N.D. Al. 2002) (“[C]ourts have authorized the acceptance of the lower of competing bids
5 because the lower bid provides greater benefit to the estate than the higher bid.”). “The Debtor’s
6 duty is to maximize value to the creditors, and that maximization includes considerations such as
7 finality, stability, and expeditious resolution of the bankruptcy proceeding.” *160 Royal Palm, LLC*,
8 600 B.R. at 130; *see also In re Art & Architecture Books of the 21st Century*, No. 2:13-BK-14135-
9 RK, 2015 WL 3492900, at *5 (Bankr. C.D. Cal. May 29, 2015) (“Debtor has actively and
10 competently marketed the Property to prospective purchasers and the Buyer has offered the best
11 purchase price **and has the best possibility of closing on the sale transactions** contemplated by the
12 Motion.”) (emphasis added).

13 The Debtors presented un rebutted evidence raising substantial “concerns about the
14 uncertainty of the offer” from GMC, *see id.* at 129, and the severe economic implications to the
15 Debtors if GMC does not close a sale, *see Chadwick Decl.* at ¶ 5. Further, the prompt closing of
16 the Sale will achieve “stability and certainty” for the Medical Staff as they expend tremendous
17 effort “on the front lines of the COVID-19 war” for the benefit of Seton’s patients. *See Medical*
18 *Staff Reply* at 1, 2; *see also NUHW Stmt.* at 4 (“We urge the court to consider the Seton community
19 and rule for the stability and certainty of a prompt private sale to AHMC, a capable and responsible
20 hospital operator.”).

21 **Third**, the Committee incorrectly assumes that an auction at this stage of the Debtors’ Cases
22 would generate greater value for the Debtors’ estates than the AHMC Sale. The Debtors’
23 “management of the procedural details surrounding bidding and sale are ‘ultimately a matter of
24 discretion that depends upon the dynamics of the particular situation.’” *In re Nuttery Farm, Inc.*,
25 467 F. App’x 711, 712 (9th Cir. 2012). The Debtors’ decision to pursue a private sale, rather than
26 an auction, is appropriate where undertaken in the interests of the Debtors’, their estates, and all
27 other parties in interest. *See In re Distrib. Energy Sys. Corp.*, No. 08-11101 (KG), 2008 WL
28 8153631, at *1 (Bankr. D. Del. Aug. 20, 2008) (finding without elaboration that a private sale of

1 debtors' assets was "in the best interests of the Debtors, their estates and creditors and all other
2 parties in interest").

3 The Debtors properly concluded that an auction will not serve the interests of the Debtors,
4 their estates, or stakeholders. As set forth above, the uncontroverted evidence demonstrates that,
5 after more than 20 months of marketing and sales processes, the Debtors only received offers from
6 AHMC and GMC for the Purchased Assets. See Moloney Decl. at ¶¶ 6-7. The Debtors concluded,
7 in their business judgment, that the GMC Seton Offer presents "significant and unacceptable risks"
8 based on the past conduct of SGM in these Cases. See Adcock Decl. at ¶ 12. Indeed, as this Court
9 recognized, SGM leveraged the prior sale process in these Cases in "a cynical attempt to extract a
10 better purchase price." See Docket No. 3723 at 4. An auction process does not present an
11 opportunity to enhance value where the Debtors recognize only one qualified bidder. See *In re MF*
12 *Global, Inc.*, 535 B.R. 596 (Bankr. S.D.N.Y. 2015) (finding that a private sale "reflects the
13 appropriate exercise of their sound business judgment" where the "uncontroverted evidence"
14 demonstrated that the debtors received only one offer to purchase the assets following reasonable
15 notice to interested parties). Further, the AHMC APA does not contemplate an auction process and
16 offers no commitment that AHMC will participate in such a process. See Mot., Ex. A.
17 Consequently, the Debtors' decision to conduct a private sale to AHMC reflects an appropriate
18 exercise of the Debtors' business judgment and consistent with the Debtors' repeated efforts to
19 maximize value for their estates.

20 **C. SGM and GMC Cannot Satisfy the Committee's Conditions to the Debtors'**
21 **Satisfaction Because SGM's Past Conduct Renders Its Commitments Illusory.**

22 The Committee suggests that the risks of an auction process can be mitigated if SGM meets
23 five conditions "to the Debtors' satisfaction." See Response at 3. However, the Committee's
24 conditions (which might represent concessions if granted by a good faith purchaser) do not diminish
25 the transaction risks associated with SGM. SGM cannot meet the Committee's newly proposed
26 transaction protections "to the Debtors' satisfaction" because SGM's past conduct renders the
27 conditions illusory as follows:
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- 1 1. **Deposit Requirement.** The Committee suggests that GMC must submit a deposit
2 in the amount of the greater of \$40 million or 75% of the GMC purchase price.
3 However, as evidenced by the failed SGM Sale, a deposit is cold comfort if GMC
4 does not close a sale. The deposit is not irrevocable, and SGM has proved a litigious
5 purchaser. Further, the Debtors presented substantial evidence concerning the
6 operating losses incurred by Seton, which would not be offset by the deposit amount
7 if a sale does not close. *See, e.g.,* Chadwick Decl. at ¶ 5. The Debtors’ ultimate goal
8 and objective in these Cases is to effectuate a going concern sale of Seton that
9 protects patients, employees, trade creditors going forward, and preserves the
10 operating arrangement with the State of California to address to the needs of the
11 State during the COVID-19 pandemic. A deposit does not achieve these objectives
12 in light of the substantial transaction risk associated with SGM.
- 13 2. **Waiver of Contingencies and Acceptance of the Orders Obtained in Connection**
14 **with the SGM Sale with Respect to (a) Attorney General Conditions and (b) the**
15 **Transfer of Medicare and Medi-Cal Provider Agreements.** Such a commitment
16 from SGM would be illusory given SGM’s past conduct. As this Court found, the
17 Debtors satisfied Sections 8.6 and 8.7 of the SGM APA, SGM agreed to render the
18 “supplemental sale order” a final and non-appealable order, and SGM agreed that
19 the Bankruptcy Court retained exclusive jurisdiction to adjudicate “Material
20 Adverse Effects.” Nevertheless, SGM appealed each and every one of the Court’s
21 decisions.
- 22 3. **Express Waiver of Appeal Rights with Respect to Any Order Entered in**
23 **Connection with the Sale.** This condition is also illusory based on SGM’s pending
24 appeal (SGM appealed an order despite its contractual agreement to cooperate in
25 rendering such order final and non-appealable, and despite the express appellate
26 waiver provisions in the SGM APA). Indeed, SGM argued before this Court that it
27 did not waive its right to appeal the orders entered by this Court in furtherance of a
28 closing notwithstanding language in the SGM APA to the contrary. *See, e.g.,* Adv.
Case No. 2:20-ap-01001-ER, Docket No. 26 at 22-25 (“The APA does not address
waiver of any of the parties’ rights to appeal, nor does it evince SGM’s intent to
have this Court finally determine all disputes related to the APA without appellate
review.”).
4. **Agreement to Not Use Facts of A Seton Sale in the Adversary Proceeding.** The
condition that SGM not use the facts of a Seton sale in the Adversary Proceeding
would represent a minimum expectation rather than a concession on the part of
SGM. The Debtors will still be required to expend the time and effort to litigate the
Adversary Proceeding, and the District Court may nevertheless take *sua sponte*
judicial notice of the facts of these Cases. Further, the conditions suggest that SGM
will remain free to engage in lengthy litigation, including, among other things,
assumption of executory contracts and collective bargaining disputes with the
unions.
5. **Agreement to Not Use A Seton Sale in Damages Calculations in the Adversary**
Proceeding. As with the prior condition, such agreement is far from a substantial
concession. Further, the District Court may still calculate compensatory damages
and its discretionary punitive damages calculations with reference to a Sale. SGM’s

1 agreement on this point gives little hope that the Debtors will be made whole
2 following the failure of the SGM Sale.

3 Even if GMC were to claim at the eleventh hour that it agrees “in principle” to the
4 conditions, the Debtors would still be required to expend time and effort to negotiate an asset
5 purchase agreement with SGM, and it is uncontested that “[n]egotiations with SGM and its
6 principals in connection with the SGM Sale were difficult and time consuming.” *See* Adcock Decl.
7 at ¶ 13. As this Court is aware, the Debtors moved with alacrity and have successfully negotiated
8 significant agreements with a multitude of counterparties for the benefit of the Debtors’ estates.
9 *See, e.g.*, Docket Nos. 1153 (Santa Clara County Sale Order), 4315 (Order Approving Agreements
10 with State of California), 4511 (St. Francis Sale Order), 4530 (St. Vincent Sale Order). The Debtors
11 have little optimism that negotiations with SGM would result in an expediently drafted asset
12 purchase agreement, and are concerned that operating losses would continue to accrue and the
13 Medical Staff would continue to suffer uncertainty and anxiety. *See* Medical Staff Reply at 1-2,
14 NUHW Stmt. at 3. Indeed, the prospect of a last-minute negotiation of terms hearkens back to the
15 painstaking efforts to revise Section 8.6 of the SGM APA in the courthouse cafeteria with all
16 constituents and SGM—only to have SGM refuse to close the SGM Sale despite the Debtors’
17 compliance with Section 8.6. *See* Docket No. 3632 at 4 (finding that SGM was judicially estopped
18 from claiming a right to an evaluation period under Section 8.6 of the APA). To avoid repeating
19 history, the Debtors request that the Court approve the AHMC APA and reject the notion that
20 another protracted negotiation process with SGM is in the best interests of the Debtors, their estates,
21 or stakeholders.

22 **IV.**

23 **CONCLUSION**

24 **WHEREFORE**, the Debtors respectfully request that the Court enter an order (i) granting
25 the Motion, (ii) overruling the Committee’s Response, and (iii) granting the Debtors such other and
26 further relief as the Court may deem just and proper.
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