

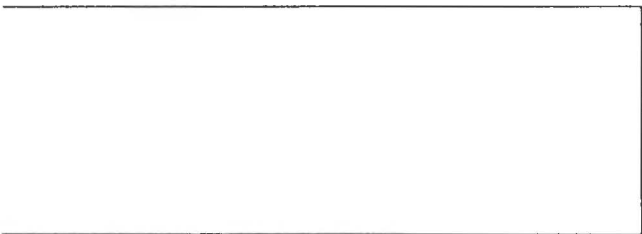
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8 **UNITED STATES BANKRUPTCY COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA (LOS ANGELES DIVISION)**

<p>10 In re</p> <p>11 VERITY HEALTH SYSTEMS OF CALIFORNIA, INC., <i>et al.</i>,</p> <p>12 Debtor and Debtor In Possession.</p> <p>13 <input checked="" type="checkbox"/> Affects All Debtors</p> <p>14 <input type="checkbox"/> Affects Verity Health System of California, Inc.</p> <p>15 <input type="checkbox"/> Affects O'Connor Hospital</p> <p>16 <input type="checkbox"/> Affects Saint Louise Regional Hospital</p> <p>17 <input type="checkbox"/> Affects St. Francis Medical Center</p> <p>18 <input type="checkbox"/> Affects St. Vincent Medical Center</p> <p>19 <input type="checkbox"/> Affects Seton Medical Center</p> <p>20 <input type="checkbox"/> Affects O'Connor Hospital Foundation</p> <p>21 <input type="checkbox"/> Affects Saint Louise Regional Hospital Foundation</p> <p>22 <input type="checkbox"/> Affects St. Francis Medical Center of Lynwood Medical Foundation</p> <p>23 <input type="checkbox"/> Affects St. Vincent Foundation</p> <p>24 <input type="checkbox"/> Affects St. Vincent Dialysis Center, Inc.</p> <p>25 <input type="checkbox"/> Affects Seton Medical Center Foundation</p> <p>26 <input type="checkbox"/> Affects Verity Business Services</p> <p>27 <input type="checkbox"/> Affects Verity Medical Foundation</p> <p>28 <input type="checkbox"/> Affects Verity Holdings, LLC</p> <p><input type="checkbox"/> Affects De Paul Ventures, LLC</p> <p><input type="checkbox"/> Affects De Paul Ventures - San Jose Dialysis, LLC</p> <p>Debtors and Debtors In Possession.</p>	<p>Lead case no.: 2:18-bk-20151-ER</p> <p>Jointly administered with:</p> <p>Case no. 2:18-bk-20162-ER</p> <p>Case no. 2:18-bk-20163-ER</p> <p>Case no. 2:18-bk-20164-ER</p> <p>Case no. 2:18-bk-20165-ER</p> <p>Case no. 2:18-bk-20167-ER</p> <p>Case no. 2:18-bk-20168-ER</p> <p>Case no. 2:18-bk-20169-ER</p> <p>Case no. 2:18-bk-20171-ER</p> <p>Case no. 2:18-bk-20172-ER</p> <p>Case no. 2:18-bk-20173-ER</p> <p>Case no. 2:18-bk-20175-ER</p> <p>Case no. 2:18-bk-20176-ER</p> <p>Case no. 2:18-bk-20178-ER</p> <p>Case no. 2:18-bk-20179-ER</p> <p>Case no. 2:18-bk-20180-ER</p> <p>Case no. 2:18-bk-20181-ER</p> <p>Chapter 11 cases Hon. Ernest M. Robles</p> <p>OBJECTION OF CALIFORNIA ATTORNEY GENERAL TO "DEBTORS' EX PARTE MOTION FOR AN ORDER AUTHORIZING THE DEBTORS TO DISCLOSE TO THE CALIFORNIA ATTORNEY GENERAL BIDS FOR THE ACQUISITION OF ASSETS RELATED TO ST. FRANCIS MEDICAL CENTER SUBJECT TO CONFIDENTIALITY RESTRICTIONS" [DOC. 4708]</p> <p>Hearing Date and Time: Date: To be set, if necessary Time: To be set, if necessary</p>
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Location: United States Bankruptcy Court
Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012

Xavier Becerra, Attorney General of the State of California (the “Attorney General”), hereby objects to the “Debtors’ *Ex Parte* Motion for an Order Authorizing the Debtors to Disclose to the California Attorney General Bids for the Acquisition of Assets Related to St. Francis Medical Center Subject to Confidentiality Restrictions” [Doc. 4708] (the “Motion”).

I. Summary

In connection with the Attorney General’s review of the Debtors’ sale of substantially all assets of St. Francis Medical Center (“St. Francis”) to Prime Healthcare Services, Inc. (“Prime”), the Debtors seek an order allowing them to provide the Attorney General with the bids received for St. Francis—but only on the condition that the bids be kept confidential by the Attorney General, “without any possibility of public disclosure.”

The Motion should be denied for two reasons, one procedural and one substantive.

First, the Debtors’ procedural approach—an *ex parte* motion¹ to the Bankruptcy Court, asking it to preemptively meddle in the internal deliberations of a constitutional officer of the State—is wrong. This is instead a question of administrative law. It is governed by 11 CCR § 999.5(c)(3), which addresses requests that information submitted to the Attorney General, in the context of review of sales of nonprofit hospitals, be kept confidential. If the Debtors make such a request, and the Attorney General denies it, they may employ whatever remedies are available to them under California law, as a party seeking review of an administrative decision, likely subject to “abuse of discretion” review.

Second, the Debtors are wrong on the merits. They imply that various provisions in the APA and the Bidding Procedures require, with only limited exceptions, that the bids they

¹ That is puzzling. The Local Rules do not provide for *ex parte* motions. An emergency motion, or a request to shorten time for hearing on a motion, may be brought under LBR 9075-1. And certain motions may be brought under LBR 9013-1(p) with notice but no hearing, or (q) with neither a hearing nor notice (beyond automatic NEF notice). But the Debtors’ motion does not appear to fit under any of these provisions.

1 received for St. Francis be kept confidential. That is *not* correct. As set out in detail below, the
2 cited provisions establish no such duty of confidentiality. The true explanation, as the Debtors
3 acknowledge in passing, appears to be that they entered into non-disclosure agreements regarding
4 the bids, and now face the awkward possibility that the bids will nevertheless be made public. But
5 that is no reason to keep a bid confidential. Certainly it does not satisfy 11 CCR § 999.5(c)(3)'s
6 rule that, in this context, information submitted to the Attorney General be in the public record
7 unless the *public* interest in its confidentiality *clearly* outweighs the *public* interest in its
8 disclosure.

9 **II. Confidentiality is governed by California law and decided by the Attorney General**

10 The issue is governed by 11 CCR § 999.5 (hereafter "§ 999.5"). The regulation may be
11 summarized, in relevant part, as follows. A nonprofit corporation (the Debtors) that owns a
12 hospital (St. Francis), and proposes to sell it to a for-profit entity (Prime), must first "provide
13 written notice to, and obtain the written consent of, the Attorney General." § 999.5(a)(1). The
14 notice submitted to the Attorney General must contain "the information required by section
15 999.5(d)." § 999.5(c)(1). This includes "[c]opies of all Requests for Proposal sent to any potential
16 transferee, and all responses received thereto," as well as "[c]opies of each Proposal received by
17 the applicant from any potential transferee suggesting the terms of a potential transfer of
18 applicant's health facilities or facilities that provide similar health care, and any analysis of each
19 such Proposal." § 999.5(d)(11)(C), (E). In sum: the notice submitted to the Attorney General *must*
20 include all bids received by the Debtors for St. Francis.²

21 The regulation's treatment of confidential information is straightforward:
22
23

24 _____
25 ² Indeed, not only those received in response to the Debtors' most recent marketing
26 efforts, but any received during the prior 12 months before the decision to sell St. Francis was
27 made, given § 999.5(b)(5)'s definition of "potential transferee" as "any corporation or entity with
28 which an applicant has engaged in discussions, or from which an applicant has received a written
proposal, concerning a possible agreement or transaction for which written notice is required by
section 999.5(a)(1) of these regulations if such discussions or written proposal occurred within
the twelve (12) months preceding the decision to transfer assets or control to a transferee."

1 All of the information provided to the Attorney General by the applicant shall be treated as
2 a public record unless such information is a trade secret or unless the public interest in
3 maintaining the confidentiality of that information clearly outweighs the public interest in
4 disclosure.

5
6 § 999.5(c)(3). The applicant has “the sole burden of *designating*, at the time of its submission,
7 any specific information that it believes should be treated as confidential *and the reasons*
8 *therefor.*” § 999.5(c)(3)(A) (emphasis added).³ The Attorney General must then “determine the
9 validity of the confidentiality claim and communicate that determination to the applicant prior to
10 any public disclosure of the information.” *Id.*

11 If the Attorney General denies a request by an applicant that specific information included
12 in the applicant’s notice be treated as confidential, then the applicant may look to its remedies
13 under California law. But this may mean persuading a court that the Attorney General abused his
14 discretion in deciding that “the public interest in maintaining the confidentiality” of the
15 designated information did *not* “clearly outweigh[] the public interest in disclosure”—a showing
16 that may be very difficult to make. Little wonder, then, that the Debtors want to preempt the
17 required procedures by seeking an order from the Court under section 105, deeming the bids
18 confidential in perpetuity.

19 But it doesn’t work that way. Any sale of St. Francis to Prime must be approved by the
20 Attorney General, and, as set out above, the California law governing the process by which the
21 Debtors must seek that approval contains provisions addressing precisely the “confidentiality”
22 issues raised by the Motion. Indeed, both the Code itself and the Sale Order in this case make
23 clear that the pending section 363 sale of St. Francis to Prime is to proceed consistent with the
24 Attorney General’s review process, not in conflict with it:

25 ³ “Designating” the “specific information” in the bids that the Debtors believe should be
26 treated as confidential is *not* the same thing as submitting bids to the Attorney General with that
27 information actually redacted. Redaction is a distinct matter: “If the applicant designates any of
28 the information in the notice as confidential, five additional copies of the notice shall be
submitted to the Attorney General with the confidential information identified and redacted.”
§ 999.5(c)(3)(C).

1 • Section 363(d)(1) provides, in relevant part, that a nonprofit debtor may sell its
2 property “only in accordance with nonbankruptcy law applicable to the transfer of property by” a
3 nonprofit entity—i.e., here, pursuant to § 999.5.

4 • Section 541(f) is to the same effect, providing that a section 501(c)(3) corporation
5 may transfer its property to a for-profit entity, but “only under the same conditions as would
6 apply if the debtor had not filed a case under” the Code—again, deferring to § 999.5.

7 • Finally, the Sale Order [Doc. 4511, at 22, ¶ 38] provides, in relevant part, that
8 “[n]otwithstanding any provision to the contrary in the APA or the Sale Order, nothing in the
9 APA or this Sale Order shall limit or be construed as a waiver of the Attorney General’s statutory
10 or regulatory authority or other rights or defenses”

11 The bottom line: if the Debtors want specific information in the bids for St. Francis kept
12 confidential, then they must abide by the provisions of § 999.5. The one thing they certainly may
13 not do, procedurally, is seek to evade state law on this point by asking the Court for an order
14 preemptively interfering with the Attorney General’s internal decision-making process.

15 **III. The Debtors have made no showing on the merits that would justify confidentiality**

16 Procedure aside, the Debtors are wrong on the merits. Ignoring § 999.5(c)(3), they instead
17 justify their plea for perpetual confidentiality with references to provisions of the Bidding
18 Procedures [Doc. 4165, Exh. 1] and the APA itself [Doc. 4471, Exh. B], suggesting that those
19 documents provide that bids are generally to remain confidential, with only limited exceptions.
20 *See* Motion, at 3 ll. 18-22⁴; *id.*, at 3 l. 26-4 l. 2⁵; *id.*, at 4, ll. 15-18.⁶ But that, it seems, is not so:

21 _____
22 ⁴ “Other than [the Debtors’ lawyers and investment bankers, and lawyers for secured
23 creditors and the Committee], *the Bidding Procedures only permitted the Debtors to disclose* (i)
24 the identities of bidders that submitted ‘Qualified Bids’ (as that term is defined in the Bidding
Procedures) to potential bidders that submitted Bids, and (ii) terms of the Qualified Bids with
‘Qualified Bidders’ if an auction was held.” (Emphasis added.)

25 ⁵ “In connection with the negotiation of the asset purchase agreements, Prime, the Debtors
26 and its constituents agreed that the Debtors would only provide Qualified Bidders, including
Prime, with copies of bids that were determined to be ‘Qualified Bids’.”

27 ⁶ “While the Debtors are willing to provide the Bids to the Attorney General, the Debtors
28 want to ensure that the Bids will *remain confidential in accordance with the Bidding Procedures*
Order.” (Emphasis added.)

1 nothing in the provisions of the Bidding Procedures or Sale Order cited by the Debtors—
2 paragraphs 8, 11 and 13(c) of the Bidding Procedures [Doc. 4165, at 14-15, 17-18 (.pdf
3 pagination)] and section 6.3 of the APA (Doc. 4471, at 95 (.pdf pagination)]—makes the bids
4 confidential as a general matter, or as to any specific information contained in them, or limits
5 their disclosure.

6 Beyond that, the Debtors offer vague generalities. So:

7 • “Absent confidentiality,” they argue, “bidders might decline to make offers because
8 of reluctance to expose their offers to public scrutiny or criticism.” Motion, at 5-6. A bidder’s
9 “reluctance to expose” its offer to “public scrutiny or criticism” is not a good argument for
10 allowing the bidder, if it chooses to participate in the public process that is chapter 11 (and in
11 particular a chapter 11 asset sale), to keep the details of its offer confidential.

12 • “Here, the confidentiality protections in the Bidding Procedures Order offered
13 potential bidders the ability to provide the Debtors with confidential commercial information that
14 is entitled to protection under both the Federal Rules and the Federal Rules of Bankruptcy
15 Procedure.” Motion, at 5 ll. 24-27. But if there is specific “confidential commercial information”
16 in legitimate need of protection, the answer is simple: § 999.5(c)(3) already provides a method by
17 which that information may be protected, and so there is no need to seek to end-run state law.

18 But the true explanation for the Debtors’ concern is likely not hard to find. The Debtors
19 themselves explain, in passing, that they “provided the Bids only to the Bid Deadline Recipients
20 on a ‘professionals’ eyes only’ basis”—essentially, only to their own lawyers and investment
21 bankers and to lawyers for the committee and major secured creditors—“and subject to the
22 confidentiality provisions of the parties’ pre-existing non-disclosure agreements.” Motion, at 5 ll.
23 18-21 (emphasis added).

24 In short: the *real* problem, it seems, is that the Debtors bound themselves to non-disclosure
25 agreements with respect to the bids, and now find themselves in the position of having,
26 nevertheless, to disclose the bids to the Attorney General—knowing that they can *ask* that the
27 Attorney General keep specific information confidential and non-public, but unable to *guarantee*
28 whether and to what extent he will do so. If that is what is happening, it does not justify an end-

1 run around state law and the Attorney General by seeking an order from this Court to fix a
2 problem of the Debtor's own making.

3 **IV. Conclusion**

4 For the reasons stated above, the Attorney General respectfully requests that the Court deny
5 the Motion, or else set a schedule for further briefing and/or a hearing.

6

7 Dated: May 15, 2020

Respectfully Submitted,

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XAVIER BECERRA
Attorney General of California

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/s/ David K. Eldan

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DAVID K. ELDAN
Deputy Attorney General
*Attorneys for Attorney General, State of
California*

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EXHIBIT 1

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Verity MOB Financing, LLC and Verity MOB Financing II, LLC ("MOB Lenders").⁶ UMB, Wells Fargo, U.S. Bank, and the MOB Lenders are collectively referred to herein as the "Prepetition Secured Creditors."

5. **Potential Bidders / Execution of NDA/ Financial Information.** To participate in the Auction, any party (a "Potential Bidder") wishing to submit a Bid to purchase the Purchased Assets must execute, or have executed, a nondisclosure agreement ("NDA") in the form provided by Debtors' advisors and in form and substance satisfactory to the Debtors before such Potential Bidder may receive due diligence information from the Debtors, including access to the Debtors' on-line data room or other non-public information relating to the Purchased Assets. In addition, any Potential Bidder must submit financial information to the Debtors to evidence such Potential Bidder's ability to consummate the Sale, which information must be satisfactory to the Debtors after consultation with the Consultation Parties.
6. **Due Diligence.** After receipt of an executed NDA, the Debtors shall, upon request by the Potential Bidder, provide each Potential Bidder reasonable due diligence information as soon as reasonably practicable after such request, including access to the Debtors' on-line data room. The Debtors shall not furnish, and shall have no obligation to furnish, any confidential and/or non-public information relating to the Purchased Assets or the Debtors (collectively, "Confidential Information"), or grant access to the Debtors' on-line data room, to (i) any person that does not qualify as a Potential Bidder, or (ii) to Potential Bidders who, at such time and in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.
7. **Representations and Warranties.** The Debtors make no representation or warranty as to the Confidential Information provided through the due diligence process or otherwise, except to the extent set forth in the Draft APA (or as set forth in any Qualified APA (as defined under Paragraph 9 below) entered into between the Debtors and the Winning Bidder (as defined under Paragraph 13 below). No party may conduct any additional due diligence after the Bid Deadline (as defined under Paragraph 8 below).
8. **Bid Deadline.** Potential Bidders must submit their Bids so that such Bids are actually received by each of the following parties **no later than 5:00 p.m. (Pacific Time) on April 3, 2020** (the "Bid Deadline"): (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors' Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney

⁶ Such parties are further described in the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the "Final DIP Order").

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(jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 Notes Trustee: McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Nathan F. Coco and Megan Preusker (ncoco@mwe.com; mpreusker@mwe.com)); (vi) counsel to the Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com)); and (vii) counsel to the MOB Lenders: Jones Day, 250 Vesey Street, New York, NY 10281 (Attn: Bruce Bennett, Benjamin Rosenblum, and Peter Saba (bbennett@jonesday.com, brosenblum@jonesday.com, psaba@jonesday.com)) (collectively, the "Bid Deadline Recipients"). Potential Bidders may either e-mail their Bids to the e-mail addresses listed above or may deliver hard-copies of their Bids to the physical addresses listed above so that they are actually received by the Bid Deadline. The Debtors shall have no obligation to consider any other delivery format, such as fax, as being acceptable. The Debtors may, in their sole discretion after consultation with the Consultation Parties, extend the Bid Deadline until the commencement of the Auction for one or more Potential Bidders without prior notice to any party, but shall have no obligation to do so under any circumstances.

9. **Qualified Bid**. In order to constitute a "Qualified Bid," a Bid must satisfy the following requirements (the "Bid Requirements"):

- (a) be submitted (i) in writing and (ii) be received by the Bid Deadline Recipients by the Bid Deadline as set forth in Paragraph 8 of these Bidding Procedures, subject to Paragraph 11 of these Bidding Procedures;
- (b) constitute a good faith, bona fide offer to purchase the Purchased Assets in accordance with the terms of the Qualified APA (as defined in this Paragraph 9) for a proposed purchase price ("Purchase Price") identified in such Qualified APA and defined as the "Purchase Price" therein;
- (c) identify the legal name of the Potential Bidder (including any direct or indirect equity holders, if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale);
- (d) be accompanied by a clean and a duly executed copy of an asset purchase agreement (the "Qualified APA"), the form of which shall be consistent with the Draft APA and which shall not be inconsistent with these Bidding Procedures;
- (e) be accompanied by a copy of the Qualified APA which is marked to reflect the amendments and modifications compared to the Draft APA;

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(o) if such Qualified Bid includes a Credit Bid (as defined below), evidence of (a) the basis, amount and priority of the Credit Bidder's (as defined below) security interest in the Purchased Assets that are subject to the Credit Bid and (b) the basis of the Credit Bidder's authority to make such Credit Bid if the Credit Bidder's secured claim is held in a representative capacity. No Bid that includes a Credit Bid made pursuant to § 363(k) shall qualify as a Qualified Bid, whether made at the Auction or before, unless (x) all secured creditors with a valid and perfected security interest in the Purchased Assets subject to the Credit Bid that rank equal or senior to the security interest of the Credit Bidder in such Purchased Assets consent in writing to such Credit Bid or (y) the Credit Bid expressly provides for the payment in full in cash at the closing on account of the Purchased Assets subject to valid and perfected liens that are senior in rank to the security interests of the Credit Bidder.

10. **Discretionary Determination of Stalking Horse Bidder.** The Debtors, in their discretion, after consultation with the Committee, and with the prior consent of the Prepetition Secured Creditors, may agree that a Qualified Bidder shall be afforded stalking horse status and protections (the "Stalking Horse Bidder"), including a break-up fee and expense reimbursement in an amount not to exceed in the aggregate 2.5% of the proposed Purchase Price under such Qualified Bidder's Qualified APA (the "Break-Up Fee"). Any Break-Up Fee, to the extent payable, shall only be paid from proceeds received by the Debtors at the closing of a Sale with a Qualified Bidder other than the Stalking Horse Bidder. The award of stalking horse protection may occur without further notice (other than an announcement to Potential Bidders no later than the commencement of the Auction) or order of the Bankruptcy Court.

11. **Determination of Qualified Bids.** A Bid that satisfies each of the Bid Requirements, as determined by the Debtors in their reasonable discretion, in consultation with the Consultation Parties, constitutes a "Qualified Bid", and such Potential Bidder constitutes a "Qualified Bidder." The Debtors may determine that a Bid is not a Qualified Bid if the Qualified APA differs in any material respect from the Draft APA. One business day prior to the Auction, the Debtors shall determine, after consultation with the Consultation Parties, whether any submitted bids constitute Qualified Bids. The Debtors shall file and serve on all Potential Bidders that submitted a Bid (regardless of whether such Bid was determined to be a Qualified Bid) a notice (the "Auction Notice") indicating which Potential Bidders have submitted Qualified Bids. If any Bids are designated as Qualified Bids, the Auction shall be conducted on April 7, 2020 as further described below.

12. **Credit Bid.** Any party with a valid, properly perfected prepetition or post-petition security interest in any of the Purchased Assets may credit bid (any such bid, a "Credit Bid" and any party submitting a Credit Bid, each a "Credit Bidder") for such Purchased Assets in connection with the Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the Bankruptcy Court for cause; provided, however, that no Credit Bidder may Credit Bid unless (x) all secured creditors with a valid and perfected security interest in the Purchased

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Assets subject to the Credit Bid that rank equal or senior to the security interest of the Credit Bidder in the Purchased Assets consent in writing to such Credit Bid or (y) the Credit Bid expressly provides for the payment in full in cash at the closing on account of the Purchased Assets subject to valid and perfected security interests in the Purchased Assets that are equal or senior in rank to the security interests of the Credit Bidder. Nothing herein shall limit the rights of any party in interest to seek relief from the Bankruptcy Court related to the right or alleged right of any creditor to exercise a Credit Bid for any of the Purchased Assets.

13. **Auction.** The Debtors shall conduct an auction on April 7, 2020 at the offices of Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, California 90017, commencing at 10:00 a.m. Pacific Time (the "Auction"). The Auction will be conducted to determine the highest and best Qualified Bid (the "Winning Bid," with such bidder being the "Winning Bidder"). Subject to paragraph 18 below, the Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (a) only Qualified Bidders, in person or through duly-authorized representatives at the Auction may bid at the Auction, and every Qualified Bidder must have at least one (1) such duly-authorized representative with authority to bind the Qualified Bidder at the Auction;
- (b) only such authorized representatives of each of the Qualified Bidders, the Debtors, the Consultation Parties and their respective legal and financial advisors shall be permitted to attend the Auction;
- (c) prior to the commencement of the Auction, representatives of the Debtors, and/or the Consultation Parties may have discussions with each Qualified Bidder with respect to the terms and conditions of such Qualified Bids, and the Debtors will have selected, in consultation with the Consultation Parties, a Qualified Bid to become the opening bid at the Auction (the bid submitted by such Qualified Bidder shall be referred to as the "Opening Bid" and the Qualified Bidder shall be referred to as the "Opening Bidder");
- (d) bidding shall commence at the amount of the Opening Bid. The Opening Bid shall be announced by the Debtors at or before the commencement of the Auction. Other Qualified Bidders may then submit successive bids in increments of at least \$2,000,000 (plus, with respect to the first successive bid, the amount of the Break-Up Fee, if any) higher than the Opening Bid, and all subsequent bids must be at least \$2,000,000 higher than the previous bid. To the extent a Stalking Horse Bidder submits higher bids, such Stalking Horse Bidder shall have the right (but not the obligation) to increase its Opening Bid by using, as a credit, the amount of the Break-Up Fee when determining whether any Stalking Horse Bidder has topped the previous bid by the required amount;
- (e) Qualified Bidders shall have the right to submit additional bids that include modifications to their Qualified APA at the Auction, consistent

avoidance of doubt, any successor liability, to the maximum extent permitted by the Bankruptcy Code. For the avoidance of doubt, in the event the Sale Order is not in form and substance reasonably acceptable to Purchaser, Purchaser may, at its sole election, terminate the transaction proposed hereby.

(d) Sellers agree, subject to the reasonable exercise of their fiduciary duties, to expeditiously seek a Bankruptcy Court determination that Purchaser is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code and in good faith to file such declarations and other evidence as may be required to support a determination.

(e) Sellers shall seek expeditiously an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against Sellers, whether or not arising in connection with this Agreement, solely in the Bankruptcy Court.

6.2 Appeal of Sale Order. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Sellers shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal.

6.3 Bidding Procedures. Sellers and Purchaser shall comply with the terms of the Bid Procedures Order. Sellers shall sign this Agreement as and when permitted pursuant to the Bid Procedures Order and the Sale Order.

(a) Any Competing Bidder (as defined in the Bid Procedures) must be a Qualified Bidder (as defined in the Bid Procedures Order) under the conditions set forth in the Bid Procedures without waiver thereof or extension of any timing or similar conditions. Purchaser is irrevocably deemed to be a Qualified Bidder.

(b) The Sellers shall immediately upon determination that a bid is a Qualified Bid, simultaneously provide to all Qualified Bidders copies of all other Qualified Bids.

ARTICLE 7 CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this

CERTIFICATE OF SERVICE

Case **In re: VERITY HEALTH SYSTEMS OF CALIFORNIA, INC.**
Name: **ET AL.**
Case No.: **BKY Case No. 2:18-bk-20151**

I hereby certify that on May 15, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**OBJECTION OF CALIFORNIA ATTORNEY GENERAL TO
“DEBTORS’ EX PARTE MOTION FOR AN ORDER AUTHORIZING
THE DEBTORS TO DISCLOSE TO THE CALIFORNIA ATTORNEY
GENERAL BIDS FOR THE ACQUISITION OF ASSETS RELATED TO
ST. FRANCIS MEDICAL CENTER SUBJECT TO CONFIDENTIALITY
RESTRICTIONS” [DOC. 4708]**

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

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

I further certify that some of the participants in the case are not registered CM/ECF users.

On May 15, 2020, I served the attached above mentioned document by transmitting a true copy via electronic mail to the following non-CM/ECF participants:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 15, 2020, at Los Angeles, California.

Cynthia D. Gomez

Declarant

/s/ Cynthia D. Lira-Gomez

Signature

CERTIFIED SERVICE LIST

Electronic Notification

The following parties are currently on the list to receive email notice/service for this case.

Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017
(Attn: Tania M. Moyron (tania.moyron@dentons.com))

Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111
(Attn: James Moloney (jmoloney@cainbrothers.com))

Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067
(Attn: Gregory A. Bray and Mark Shinderman (gbray@milbank.com, mshinderman@milbank.com))

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111
(Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com));

McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606
(Attn: Nathan F. Coco and Megan Preusker (ncoco@mwe.com; mpreusker@mwe.com));

Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402
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Jones Day, 250 Vesey Street, New York, NY 10281
(Attn: Bruce Bennett, Benjamin Rosenblum, and Peter Saba (bbennett@jonesday.com, brosenblum@jonesday.com, psaba@jonesday.com))