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7
8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

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

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

23 VERITY HEALTH SYSTEM OF CALIFORNIA, INC.,
et al.,
24 Debtors and Debtors In Possession,
Plaintiffs,
25 v.

26 OLD REPUBLIC INSURANCE COMPANY and CITY
NATIONAL BANK,
27 Defendants.

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

Chapter 11 Cases

Honorable Judge Ernest M. Robles

**CALIFORNIA ATTORNEY GENERAL'S MOTION
TO STAY THE COURT'S ORDER (A)**

**AUTHORIZING THE SALE OF CERTAIN OF THE
DEBTORS' ASSETS TO SANTA CLARA COUNTY
FREE AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS
PENDING APPEAL OF THE COURT'S
MEMORANDUM OF DECISION OVERRULING
OBJECTIONS OF THE CALIFORNIA ATTORNEY
GENERAL AND SALE ORDER; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATION OF
ALICIA BERRY;**

[Dkt Nos. 1146 and 1153]



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Adv. Proc. No. 2:18-ap-01277-ER
Application for Shortened Time filed Concurrently
Hearing:
Date: [to be set]
Time:
Location: United States Bankruptcy Court
Courtroom 1568
255 East Temple Street
Los Angeles, CA 90012

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**
4 **BACKGROUND**

5 1. In July 2015, Daughters of Charity Health System and Daughters of
6 Charity Ministry Services Corporation (collectively, “Daughters”) entered into the
7 System Restructuring and Support Agreement with BlueMountain Capital
8 Management, LLC (“BlueMountain”), pertaining to the change in governance and
9 control of Daughters, its affiliated entities, five acute care hospitals and skilled
10 nursing facility; those facilities include but are not limited to: St. Vincent Medical
11 Center in Los Angeles, St. Francis Medical Center in Lynwood, O’Connor Hospital
12 in San Jose, Saint Louise Regional Hospital in Gilroy, Seton Medical Center in
13 Daly City, and Seton Coastside in Moss Beach.

14 2. On July 31, 2015, Daughters submitted written notice of the transaction
15 to the CAG for review and approval pursuant to California Corporations Code
16 sections 5914 and 5920. During the CAG’s review of the transaction, a healthcare
17 expert was retained to evaluate the potential impact of the transaction on the
18 availability and accessibility of healthcare services to each of the communities
19 served by the hospitals involved, as required by the California Code of Regulations,
20 Title 11, section 999.5, subd. (e)(5) and (e)(6). The regulations require the health
21 care expert to assess the effect of the agreement on emergency services,
22 reproductive health services, and any other health care services that the hospital is
23 providing, the provision of services to Medi-Cal patients and county indigent
24 patients, staffing and the availability of care, the likely retention of employees as it
25 may affect continuity of care, and any mitigation measures proposed by the hospital
26 to reduce any potential adverse effect on health care services. Cal. Code Regs. Tit.
27 11, § 999.5, subd. (e)(6) (2018). The regulations require that the Attorney General
28 evaluate the effect of the transaction on the public, including the availability and
accessibility of health care services to the affected community. Cal. Code Regs.

1 Tit. 11, § 999.5, subd. (f). The expert prepared five health care impact statements.
2 These healthcare impact statements included interviews with medical staff,
3 management, and employees, board members, and community representatives.
4 These health care impact statements contained the expert’s analysis of financial,
5 utilization, and health care services, demographic characteristics, payer mix,
6 hospital utilization records and trends, health status indicators, and hospital market
7 share information in formulating an opinion regarding the potential impact of the
8 transaction on the community. (Declaration of Alicia Berry, ¶ 2.)

9 3. On December 3, 2015, the CAG issued a decision to consent with
10 conditions, to the change in governance and control of Daughters of Charity Health
11 System (now known as Verity Health Systems of California, Inc.). The decision
12 contained five sets of conditions (“CAG Conditions”), one for each of the hospitals,
13 as well as a copy of the healthcare impact reports for each of the hospitals. (CAG
14 Conditions, filed September 21, 2018 [Dkt No. 256-1].) (Declaration of Alicia
15 Berry, ¶ 3.)

16 4. The December 3, 2015 decision incorporated the recommendations of the
17 healthcare expert. Several conditions were already contained within the System
18 Restructuring and Support Agreement, but were further formalized in the CAG’s
19 decision (i.e., the hospital would continue to operate as general acute care hospitals
20 with emergency services, continuation of participation in the Medi-Cal and
21 Medicare programs, continuation of staff privileges.) Moreover, the vast majority
22 of the CAG Conditions relate to the health, safety, and welfare of the People of the
23 State of California: continued operation as licensed general acute care hospitals,
24 continued provision of 24-hour emergency and trauma medical services, continued
25 provision of certain essential health care services including reproductive health
26 services, continued participation in the Medi-Cal and Medicare programs for low
27 income, disabled and elderly patients, and the continuation of governmental
28 contracts that provide access to care for indigent patients. (Declaration of Alicia

1 Berry, ¶ 4.)

2 5. The transaction between Daughters and BlueMountain specifically
3 contemplated a future sale of the hospitals through the Purchase Option Agreements
4 listed in Condition II. (CAG Conditions, at 177-178, 262-263, filed September 21,
5 2018 [Dkt No. 256-1].) Condition I of the CAG Conditions provides that the
6 conditions shall be legally binding on the parties to the transaction, including the
7 hospital facilities, and any other subsidiary, parent, general partner, limited partner,
8 member, affiliate, successor, successor in interest, assignee, or person or entity
9 serving in a similar capacity, and any entity succeeding thereto as a result of
10 consolidation, affiliation, merger, or acquisition of all of substantially all of the real
11 property or operating assets of the hospitals, or the real property on which the
12 hospital is located, any and all current and future owners, lessees, licensees, or
13 operators of the hospital, and any and all current and future lessees and owners of
14 the real property on which the hospital is located. (CAG Conditions, at 177, 262,
15 filed September 21, 2018 [Dkt No. 256-1].)

16 6. The conditions imposed by the CAG's decision for each of the five
17 hospitals and one skilled nursing facility remain in effect for fifteen years from the
18 closing date of the transaction. The conditions also make clear that they apply to all
19 future owners, managers, lessees, licensees, or operators of the hospitals and skilled
20 nursing facility. (CAG Conditions, at 177, 262, filed September 21, 2018 [Dkt No.
21 256-1].)

22 7. As part of the transaction, Daughters was renamed Verity Health System
23 of California, Inc. ("Verity"). Verity has since complied with the CAG Conditions
24 and has not sought the CAG's approval to modify any conditions.

25 8. On August 31, 2018, Verity and its nonprofit subsidiaries (collectively,
26 the "Debtors") each filed a voluntary petition for relief under chapter 11 of the
27 Bankruptcy Code.

28 9. On October 1, 2018, Verity filed Debtors' Notice Of Motion And Motion

1 For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement
2 For Stalking Horse Bidder And For Prospective Overbidders To Use, (2)
3 Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid
4 Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties,
5 (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The
6 Highest Bidder And (5) Approving Procedures Related To The Assumption Of
7 Certain Executory Contracts And Unexpired Leases; And (II) An Order (A)
8 Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And
9 Encumbrances; Memorandum Of Points And Authorities In Support Thereof (Bid
10 Procedures Motion) [Dkt No. 365] related to two of the hospitals in Santa Clara
11 County: O’Connor Hospital in San Jose, and Saint Louise Regional Hospital in
12 Gilroy. Section 5.6 of the Asset Purchase Agreement indicates that “Purchaser
13 agrees that promptly after the Signing Date, and in any event prior to the date of the
14 Auction, it will use its commercially reasonable efforts to negotiate any issues with
15 the CAG over approval of the transactions contemplated by this Agreement. Sellers
16 agree to cooperate in good faith as permitted under the Bankruptcy Code to assist in
17 this endeavor.” (Asset Purchase Agreement, Section 5.6, at 49. [Dkt No. 365-1].)

18 10. On October 10, 2018 the CAG filed his Response to Debtors’ Motion for
19 Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for
20 Stalking Horse Bidder, and (II) an Order (A) Authorizing the Sale of Property Free
21 and Clear of all Claims, Liens and Encumbrances; Memorandum of Points and
22 Authorities in Support Thereof (AG Bid Procedure Response) [Dkt No. 463]
23 wherein the CAG objected to a sale free and clear of the CAG Conditions.

24 11. On October 17, 2018 Verity filed its Debtors’ Reply to Response of CAG
25 to Debtors’ Bid Procedures Motion [Dkt No. 560].

26 12. On October 22, 2018, the CAG filed his Sur-Reply to Debtors’ Reply to
27 Response to CAG to Debtors’ Bid Procedures Motion; Declaration of Alicia Berry
28 (AG Bid Procedure Sur-Reply [Dkt No. 619] wherein the CAG objected to a sale

1 free and clear of the CAG Conditions.

2 13. In the Court's Order dated October 30, 2018, the court did not rule on the
3 objections asserted by the CAG, finding such objections premature. However, the
4 objections were preserved for the Sale Hearing. [Dkt No. 714].)

5 14. Beginning in late October 2018, staff from the CAG's Office began
6 discussions with counsel for the County of Santa Clara ("County") regarding the
7 applicability of the CAG Conditions.

8 15. On November 2, 2018, the County submitted a request for clarification of
9 certain of the CAG Conditions for O'Connor Hospital and Saint Louise Regional
10 Hospital. (County Request for Clarification, p. 5-8 [Dkt No. 1066].)

11 16. On November 9, 2018, the CAG issued a response clarifying that the
12 CAG Conditions identified in the November 2 letter would not be enforced against
13 the County. (AG Letter of Clarification, p. 10-12 [Dkt No. 1066].)

14 17. On December 12, 2018, Debtors' filed their Debtors' Notice of Motion
15 and Motion for the Entry Of (I) an Order (1) Approving Form of Asset Purchase
16 Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2)
17 Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid
18 Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4)
19 Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder
20 and (5) Approving Procedures Related to the Assumption of Certain Executory
21 Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of
22 Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of
23 Points and Authorities In Support ("Motion for Sale") [Dkt No. 1041].

24 18. On December 14, 2018, the CAG filed its Response to the Motion for
25 Sale (CAG Response [Dkt No. 1066].)

26 19. On December 21, 2018, the Court issued its Preliminary Findings and
27 Conclusions [Dkt No. 1125], and requested the Debtors, the CAG, the Official
28 Committee of Unsecured Creditors, and the County of Santa Clara submit further

1 briefing by December 24, 2018.

2 20. The CAG submitted his Response on December 24, 2018 [Dkt No.
3 1140], and his errata dated December 26, 2018 [Dkt No. 1144].

4 21. Debtor submitted a Response on December 24, 2018 [Dkt No. 1139]; and
5 on that date also submitted the Declaration of Douglas Press [Dkt No. 1141].

6 22. On December 26, 2018, the Court issued its Memorandum of Decision
7 Overruling the Objections of the CAG to the Debtors' Sale Motion [Dkt No. 1146],
8 and its Sale Order on December 27, 2018 [Dkt No. 1153].

9 23. The transaction is scheduled to close by February 28, 2019. (Declaration
10 of Alicia Berry, ¶ 5.)

11 12 **ARGUMENT**

13 Federal Rules of Bankruptcy Procedure, rule 8007(a)(1)(A) allows a
14 bankruptcy court to suspend an order pending appeal. The standard for determining
15 whether to grant a stay pending appeal is similar to the standard for issuing a
16 preliminary injunction. *Hilton v. Braunskill (Braunskill)*, 481 U.S. 770, 776
17 (1987); *Tribal Vill. of Akutan v. Hodel*, 859 F.2d 662, 663 (9th Cir. 1988); *see also*
18 *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20, (2008) (laying out four-
19 pronged test for preliminary injunctive relief). For both the appellate court and the
20 district court, "the factors regulating the issuance of a stay are generally the same:
21 (1) whether the stay applicant has made a strong showing that he is likely to
22 succeed on the merits on the appeal; (2) whether the applicant will be irreparably
23 injured absent a stay; (3) whether the issuance of the stay will substantially injure
24 the other parties in the proceeding; and (4) where the public interest lies."
25 *Braunskill*, 481 U.S. at 776; *see also Humane Soc'y of U.S. v. Gutierrez*, 558 F.3d
26 896, 896 (9th Cir. 2009).

27 Courts need not give equal weight to each of the four factors. *Standard*
28 *Havens Prods v. Gencor Indus. (Standard Havens)*, 897 F.2d 511, 512 (Fed. Cir.

1 1990); *see also Providence Journal Co. v. Federal Bureau of Investigation*, 595
2 F.2d 889, 890 (1st Cir. 1979). Courts have used the sliding scale approach to
3 decide motions for stay. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011);
4 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).
5 Likelihood of success in the appeal is not a rigid concept. *Standard Havens*, 897
6 F.2d at 512; *see also Washington Metro Area Transit Comm’n v. Holiday Tours*,
7 559 F.2d 841, 844 (D.C. Cir. 1977) (A court may grant a stay when “[t]here is
8 substantial equity, and a need for judicial protection, whether or not movant has
9 shown a mathematic probability of success.”).

10 A motion for stay of the order of a bankruptcy judge must ordinarily be
11 presented to the bankruptcy judge in the first instance. Fed. R. Bankr. P. 8007.

12 **I. THE CAG IS LIKELY TO SUCCEED ON THE MERITS OF THE APPEAL**

13 The Bankruptcy Court held 1.) that the CAG had waived his right to object to
14 the sale of the hospitals free and clear of the CAG Conditions, 2.) that the CAG is
15 equitably estopped from contesting the Debtors’ ability to sell the hospitals free and
16 clear of the CAG Conditions, and 3.) that the sale of a nonprofit healthcare facility
17 to a public entity is not subject to CAG review under Corporations Code sections
18 5914 and 5920. The three grounds for the Court’s ruling are discussed separately
19 below:

20 **A. There Was No Waiver of the CAG’s Conditions**

21 Under California law, waiver is a question of fact. Waiver is an affirmative
22 defense, for which the party asserting it bears the burden of proof. *Intel Corp. v.*
23 *Hartford Acc. & Indem. Co.* 952 F.2d 1551,1559 (9th Cir. 1991). Here, neither
24 Debtor nor the County has met the burden of proof.

25 Shortly before the CAG filed his CAG Response on December 14, Assistant
26 County Counsel Doug Press was advised that the CAG did not object to the sale *as*
27 *long as the conditions as currently or subsequently clarified remained in place.*
28 (Declaration of Angela Sierra, p. 21, ¶ 6-7 [Dkt No. 1144.]) The County provided

1 no evidence that the CAG intended to, or had, withdrawn his previous objections.
2 In fact, the Declaration of Doug Press further corroborates the arguments and
3 declarations submitted by the CAG. Mr. Press acknowledges that “we also agreed
4 to discuss, *post-sale*, how to address the other conditions under a variety of
5 approaches” and that “ongoing discussions with the County about the other
6 conditions were contemplated outside the Court process.” (Declaration of Douglas
7 Press, ¶ 5 [Dkt No. 1141].) As such, it is clear that the County understood that the
8 CAG Conditions would survive the sale order, or there would have been no need to
9 continue discussing the CAG Conditions post-sale. Thus, as evidenced by Press’
10 declaration, the County did not have a reasonable belief that the CAG had
11 intentionally relinquished his police and regulatory rights.

12 **B. The Doctrine of Equitable Estoppel Does Not Apply**

13 The doctrine of equitable estoppel requires: 1.) the party to be estopped must
14 know the facts, 2.) he must intend that his conduct shall be acted on, 2.) the party
15 asserting the right to estoppel must be ignorant of the true facts, and 4.) the party
16 asserting estoppel must act in reliance and to his injury. *Gabriel v. Alaska Elec.*
17 *Pension Fund* 773 F.3d 945, 955 (9th Cir. 2014).

18 Here, the County has failed to prove three factors of the four-prong test in
19 *Gabriel*. First, there has been no showing that the CAG intended the December 14,
20 2018 filing to be treated as a waiver. In fact, moments before the filing took place,
21 the Chief Assistant Attorney General Angela Sierra explained to the Assistant
22 County Counsel Doug Press that the language meant that the CAG did not object to
23 the sale *as long as the conditions, as clarified, remained in place*. Thus, the CAG
24 did not intend the filing to waive all previous objections to the sale of the hospital,
25 and no evidence has been introduced that negates this fact. Rather, the County was
26 apprised of the CAG’s position moments before the December 14, 2018 filing.

27 Second, as shown by the Declaration of Douglas Press, the County “agreed to
28 discuss, post-sale, how to address the other conditions under a variety of

1 approaches” and that “ongoing discussions with the County about the other
2 conditions were contemplated outside the Court process.” (Declaration of Douglas
3 Press, ¶ 5 [Dkt No. 1141].) As such, not only was the County apprised of the
4 CAG’s position, the County agreed that the parties would continue discussions
5 about the CAG Conditions post-sale – which requires that the CAG Conditions
6 survive the sale order.

7 Lastly, even after submitting Mr. Press’ declaration, there is no evidence that
8 the County or Debtors were injured as required by the fourth prong. While the
9 County has argued that they were injured, there is no evidence before the Court to
10 support such a position. Moreover, because the County was aware that the CAG
11 did not intend to waive his CAG Conditions, there was no reliance and no injury to
12 support the application of the equitable estoppel doctrine.

13 **C. The CAG Exercised His Police and Regulatory Powers by**
14 **Imposing Conditions on the 2015 Transaction**

15 Xavier Becerra is the duly elected Attorney General of the State of California
16 and is the chief law officer of the State, as was Attorney General Kamala Harris
17 before him. Cal. Const., art. V, § 13. The CAG has broad constitutional, common
18 law and statutory powers under the state constitution to protect the public. Cal.
19 Const., art. V, §13; *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1,
20 14-15. The CAG is charged with the supervision and regulation of nonprofit
21 corporations and other charitable trusts in this state. Cal. Govt. Code, § 12598.

22 CAG Harris exercised her police and regulatory powers in December 2015
23 when she issued a decision to consent with conditions to the change in governance
24 and control of Daughters, its affiliated entities, five acute care hospitals and skilled
25 nursing facility; including St. Vincent Medical Center in Los Angeles, St. Francis
26 Medical Center in Lynwood, O’Connor Hospital in San Jose, Saint Louise Regional
27 Hospital in Gilroy, Seton Medical Center in Daly City, and Seton Coastside in
28 Moss Beach. The terms of the CAG Conditions were to remain in place for 15

1 years, though certain conditions expire sooner. (CAG Conditions, p. 178 and 263
2 [Dkt No. 256-1].) As such, the continued operation of the CAG Conditions is a
3 continuation of the CAG’s police and regulatory powers. The Bankruptcy Court
4 was required to apply non-bankruptcy law under Bankruptcy Code sections 959(b)
5 and the amendments to the Bankruptcy Code in the Bankruptcy Abuse Prevention
6 and Consumer Protection Act of 2005 of sections 363(d)(1), 541(f), 1129(a)(16),
7 and 1221(d) that specifically provide that applicable non-bankruptcy law applies to
8 sales of assets by a nonprofit debtor.

9 The Supreme Court held in *Midlantic National Bank v. New Jersey*
10 *Department of Environmental Protection*, 474 U.S. 494, 507 (1986), in a Chapter
11 11 case that converted to a liquidation proceeding in a Chapter 7, that the
12 Bankruptcy Code does not preempt “a state statute or regulation that is reasonably
13 designed to protect the public health or safety....” The Court noted Congress’
14 intentions that the trustee’s efforts “to marshal and distribute the assets of the
15 estate” give way to the governmental interest in public health and safety. *Id.* at 502.
16 In addition, other courts have applied section 959(b) where the state was exercising
17 its inherent regulatory and police powers in a Chapter 7 or other liquidation
18 situation. *H.L.S. Energy Co., Inc.* 151 F.3d 434 (5th Cir. 1998) and *In re Stevens*, 68
19 B.R. 774 (D. Me. 1987).

20 The legislative history regarding sections 363(d)(1)¹, 1129(a)(16)², and
21 1221(d)³ clearly shows Congress’s intent to give greater influence to state
22 regulators and attorneys general, and limit the ability of trustees or debtors-in-

23 _____
24 ¹ Section 363(d)(1) provides that the trustee may use, sell, or lease property
of the estate only in accordance with non-bankruptcy law applicable to the transfer
of the debtor’s property.

25 ² Section 1129(a)(16) provides that all transfers of property of the plan shall
26 be made in accordance with any applicable provisions of non-bankruptcy law that
govern the transfer of property by a nonprofit corporation.

27 ³ The Attorney General is a party in interest to these Chapter 11 proceedings
28 pursuant to Section 1221(d) of the Bankruptcy Abuse Prevention and Consumer
Protection Act of 2005 as “the attorney general of the State in which the debtor is
incorporated, was formed or does business.”

1 possession to use, sell or lease property of a nonprofit corporation in derogation of
2 laws regarding important state interests. This is especially true when government
3 entities are enforcing their police and regulatory powers, such as Corporations Code
4 section 5914 and 5920 *et seq.*

5 Here, the CAG protected the health, safety, and welfare of the communities
6 served by the six health facilities owned and controlled by the Debtors by issuing
7 conditions requiring essential health care services to be provided by the facilities
8 including emergency services, minimum levels of charity care (free or discounted
9 care), participation in the Medi-Cal and Medicare programs, and seismic safety.
10 (CAG Conditions, filed September 21, 2018 [Dkt No. 256-1]; Cal. Const., art. V, §
11 13.)

12 Under both California law and the express terms of the conditions, the County
13 as the purchaser takes the assets subject to the existing conditions, regardless of
14 whether additional CAG review or approval is necessary. The CAG's decision is
15 binding on any successor, successor in interest, assignee or other transferee of the
16 healthcare facilities; an initial review contemplated by California Corporations
17 Code section 5914 is not necessary.

18 Condition I of the decision related to O'Connor Hospital states:

19
20 These Conditions shall be legally binding on [the parties], any other
21 subsidiary, parent, general partner, limited partner, member, affiliate,
22 successor, successor in interest, assignee, or person or entity serving in
23 a similar capacity of any of the above-listed entities [omitted]... any
24 entity succeeding thereto as a result of consolidation, affiliation,
25 merger, or acquisition of all or substantially all of the real property or
26 operating assets of O'Connor Hospital, or the real property on which
27 O'Connor Hospital is located, any and all current and future owners,
28 lessees, licensees, or operators of O'Connor Hospital, and any and all
current and future lessees and owners of the real property on which
O'Connor Hospital is located.

These Conditions shall be legally binding on the following entities, as
defined in Operating Asset Purchase Option Agreement, Operating
Asset Purchase Agreement, Real Estate Purchase Option. Agreement,
and the Real Estate Purchase Agreement, when the closing occurs on

1 the Operating Asset Purchase Agreement and the Real Estate Purchase
2 Agreement: the Option Holders, Purchaser and its Affiliates, "OpCo" a
3 Delaware limited liability company, owned directly or indirectly by
4 funds managed by BlueMountain Capital Management LLC, and
5 "PropCo" a Delaware limited liability company that will elect to be
6 treated for tax purposes as a real estate investment trust, owned
7 directly or indirectly by funds managed by BlueMountain Capital
8 Management LLC, Integrity Healthcare, LLC, a Delaware limited
9 liability company, Integrity Healthcare Blocker, LLC, a Delaware
10 limited liability company, any other subsidiary, parent, general partner,
11 limited partner, member, affiliate, successor, successor in interest,
12 managing member, assignee, or person or entity serving in a similar
13 capacity of any of the above-listed entities, any entity succeeding
14 thereto as a result of consolidation, affiliation, merger, or acquisition
15 of all or substantially all of the real property or operating assets of
16 O'Connor Hospital, or the real property on which O'Connor Hospital is
17 located, any and all current and future owners, lessees, licensees, or
18 operators of O'Connor Hospital, and any and all current and future
19 lessees and owners of the real property on which O'Connor Hospital is
20 located. (CAG Conditions, at 176-177, 261-262, filed September 21,
21 2018, emphasis added [Dkt No. 256-1].)

22 Also, construction of a statute by officials charged with its administration,
23 including their interpretation of authority vested in them to implement and carry out
24 its provisions, is entitled to great weight and courts should defer to the agency.
25 *Morris v. Williams* 67 Cal.2d 733 (1967); *Aguilar v. Association for Retarded*
26 *Citizens* 234 Cal.App.3d 21(1991); and *Chevron USA, Inc. v. Natural Resources*
27 *Defense Council, Inc.* 467 U.S. 837, 844 (1984). Thus, the CAG should be given
28 deference to interpret California laws concerning his authority and regulations
promulgated by his office.

20 **II. THE CAG WILL SUFFER IRREPARABLE INJURY ABSENT A STAY**

21 Absent a stay, the proposed sale transaction will close prior to a ruling on the
22 CAG's appeal. If the CAG's Conditions should have remained in place, his appeal
23 may well be mooted because any reversal or modification of the Sale Order on
24 appeal will not affect the validity of a sale under 11 U.S.C. section 363(m).
25 Paragraph E of the Sale Order seeks to give the parties protection under section
26 363(m). Section 363(m) effectively moots any challenge to a section 363 sale that
27 affects the validity of the sale so long as the purchaser acted in good faith and the
28 appellant failed to obtain a stay of the sale. Thus, without the stay, any reversal or

1 modification of the Sale Order on appeal will not affect the validity of a sale, and
2 the remaining CAG Conditions will not be imposed on the County even if the
3 Court's ruling is incorrect.

4 The CAG, on behalf of the People of California, will suffer irreparable injury
5 by being denied his police and regulatory powers to enforce conditions that will
6 protect the public health, safety, and welfare of the Californians.

7 **III. THERE WILL BE LESS HARM TO OTHER INTERESTED PARTIES IF A**
8 **STAY IS GRANTED**

9 The third factor is whether there will be any harm to other interested parties if
10 a stay is granted. There may be some additional interest on any debt that has to be
11 paid if the Debtor is prohibited from closing the transaction. The only potential
12 impact on creditors is a slight delay in distribution during the pendency of the
13 appeal and the accrual of interest on such amounts during the pendency of the
14 appeal. However, there is a bigger harm to the affected community if this transfer
15 of assets is allowed without the continued application of the CAG Conditions that
16 were imposed by AG Harris using her police and regulatory powers to protect the
17 public health, safety, and welfare of the People of California.

18 **IV. A STAY WOULD PROMOTE THE PUBLIC INTEREST**

19 As stated above, a stay will promote the public's interest in allowing the
20 District Court to determine on appeal whether the CAG can retain his police and
21 regulatory powers to enforce conditions that were designed to protect the public
22 health, safety, and welfare of the People of the State of California. The CAG
23 Conditions address the continued operation as licensed general acute care hospitals,
24 continued provision of 24-hour emergency and trauma medical services, continued
25 provision of certain essential health care services including reproductive health
26 services, continued participation in the Medi-Cal and Medicare programs for low
27 income, disabled and elderly patients, and the continuation of governmental
28 contracts that provide access to care for indigent patients. The application of these

1 important state laws is in the public interest.

2 **CONCLUSION**

3 For the reasons stated above, the CAG respectfully requests that this Court
4 enter an order staying the Sale Order until the conclusion of an appeal therefrom.

5
6 Dated: January 8, 2019 Respectfully submitted,

7 XAVIER BECERRA
8 Attorney General of California
9 TANIA M. IBANEZ
10 Senior Assistant Attorney General

11 /s/ ALICIA BERRY
12 Deputy Attorney General
13 *Attorneys for Xavier Becerra, Attorney*
14 *General of California*

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DECLARATION OF ALICIA BERRY

I, ALICIA BERRY, hereby declare:

1. I am a Deputy Attorney General at the CAG’s office. I make this declaration of my own personal knowledge and belief, and, if called as a witness, I could competently testify to the matters set forth herein.

2. It is my understanding that on July 31, 2015, Daughters submitted written notice of the transaction to the CAG for review and approval pursuant to California Corporations Code sections 5914 and 5920. During the CAG’s review of the transaction, a healthcare expert was retained to evaluate the potential impact of the transaction on the availability and accessibility of healthcare services to each of the communities served by the hospitals involved, as required by the California Code of Regulations, Title 11, section 999.5, subd. (e)(5) and (e)(6). The regulations require the health care expert to assess the effect of the agreement on emergency services, reproductive health services, and any other health care services that the hospital is providing, the provision of services to Medi-Cal patients and county indigent patients, staffing and the availability of care, the likely retention of employees as it may affect continuity of care, and any mitigation measures proposed by the hospital to reduce any potential adverse effect on health care services. Cal. Code Regs. Tit. 11, § 999.5, subd. (e)(6) (2018). The regulations require that the Attorney General evaluate the effect of the transaction on the public, including the availability and accessibility of health care services to the affected community. Cal. Code Regs. Tit. 11, § 999.5, subd. (f). The expert prepared five health care impact statements. These health care impact statements included interviews with medical staff, management, and employees, board members, and community representatives. These health care impact statements contained the expert’s analysis of financial, utilization, and health care services, demographic characteristics, payer mix, hospital utilization records and trends, health status indicators, and hospital market share information in formulating an

1 opinion regarding the potential impact of the transaction on the community.

2 3. It my understanding that on December 3, 2015, the CAG issued a
3 decision to consent with conditions, to the change in governance and control of
4 Daughters of Charity Health System (now known as Verity Health Systems of
5 California, Inc.). The decision contained five sets of conditions, one for each of the
6 hospitals, as well as a copy of the healthcare impact reports for each of the
7 hospitals. (A true and correct copy of the CAG Conditions was filed with this Court
8 on September 21, 2018 [Dkt No. 256-1].)

9 4. It is my understanding that the majority of the CAG Conditions relate
10 to the health, safety, and welfare of the People of the State of California: continued
11 operation as licensed general acute care hospitals, continued provision of 24-hour
12 emergency and trauma medical services, continued provision of certain essential
13 health care services including reproductive health services, continued participation
14 in the Medi-Cal and Medicare programs for low income, disabled and elderly
15 patients, and the continuation of governmental contracts that provide access to care
16 for indigent patients.

17 5. I have been informed by counsel for the County and the Debtors that
18 the transaction is scheduled to close in late February. Therefore, the sale
19 transaction could close before the CAG's request for a stay pending appeal is ruled
20 on by this Court.

21 I declare under penalty of perjury under the laws of the State of California
22 that the foregoing is true and correct.

23 Executed on January 8, 2019 at Los Angeles, California.

24
25 _____ /s/ Alicia Berry
26 Alicia Berry, Deputy Attorney General
27 For Xavier Becerra, California Attorney General
28

CERTIFICATE OF SERVICE

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

I hereby certify that on **January 9, 2019** I *electronically filed* the following documents with the Clerk of the Court by using the CM/ECF system:

(1) CALIFORNIA ATTORNEY GENERAL'S MOTION TO STAY THE COURT'S ORDER (A) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS TO SANTA CLARA COUNTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS PENDING APPEAL OF THE COURT'S MEMORANDUM OF DECISION OVERRULING OBJECTIONS OF THE CALIFORNIA ATTORNEY GENERAL AND SALE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ALICIA BERRY;

(2) APPLICATION FOR ORDER SETTING HEARING ON SHORTENED NOTICE [LBR 9075-1(b)] WITH SERVICE LIST ATTACHED; and

(3) DECLARATION OF ALICIA BERRY IN SUPPORT OF THE CALIFORNIA ATTORNEY GENERAL'S APPLICATION FOR ORDER SETTING HEARING ON SHORTENED NOTICE

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 **January 9, 2019**, I have caused to be mailed in the Office of the Attorney General's *internal mail system*, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

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 **January 9, 2019**, at Los Angeles, California.

Jane Miyamura
Declarant

/s/ Jane Miyamura
Signature

Service List

VERITY HEALTH SYSTEM OF CALIFORNIA, Inc.
Case 2:18-bk-20151-ER
1/7/2019, 4 pm

Electronic Notification

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