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Attorneys for Strategic Global Management, Inc., Appellant

Case No. 2:19−cv−10352−DSF[1]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*,[2]	On Appeal from the United States Bankruptcy Court for the Central District of California

[1] This appeal (2:19-cv-10352-DSF) has been consolidated with the following related appeals: 2:19-cv-10354-DSF and 2:19-cv-10356-DSF.

[2] The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv- 20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171-ER Seton Medical

Debtors and Debtors in Possession.	(Bankr. Lead Case No.: 2:18-bk-20151-ER)
STRATEGIC GLOBAL MANAGEMENT, INC., Appellant, v. STATE OF CALIFORNIA; VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al*. Appellees.	**STRATEGIC GLOBAL MANAGEMENT, INC.'S REQUEST FOR JUDICIAL NOTICE RE: DOCUMENTS FILED OR ENTERED AFTER NOVEMBER 27, 2019** Judge: Hon. Dale S. Fischer Place: Courtroom 7D, 350 W. First Street, Los Angeles, CA 90012

Appellant Strategic Global Management, Inc. ("SGM") hereby requests that this Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the documents filed in the bankruptcy court in this matter. A Court of Appeals "may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned," Fed. R. Evid. 201(b), including "court filings and other matters of public record," *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006).

The Court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c). *In re Icenhower*, 755 F.3d 1130, 1142 (9th Cir. 2014) (citation omitted); *see In re Heritage Bond Litigation*, 546 F.3d 667, 670 (9th Cir. 2008) (granting request for judicial notice of documents arising "from proceedings that have a direct relation to this appeal.")

Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures – San Jose Dialysis, LLC 2:18-cv-20181-ER.

(citing Fed. R. Evid. 201; *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo*, 971 F.2d 244, 248 (9th Cir. 1992) ("[This court] may take notice of proceedings of other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.").

Each of the documents for which judicial notice is requested is generally described below. Judicial notice is warranted because each document evidences the fact that certain proceedings took place in the bankruptcy case. *See Reyn's Pasta Bella*, 442 F.3d at 746 n.6. A true and correct copy of each of the following documents is attached:

1. Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why [SGM] Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring [SGM] to Close the Sale Transaction by December 5, 2019, filed in the underlying chapter 11 cases on December 6, 2019. This demonstrates that Debtors attempted to leverage the bankruptcy court's order and memorandum decision of November 27, 2019, by relying on it as the basis for a contempt motion. [Bankr. Doc. No. 3773]

2. The bankruptcy court's memorandum decision in the underlying chapter 11 cases denying Debtors' Emergency Motion for Issuance of an Order to Show Cause re: Closing of the SGM Sale, filed December 9, 2019. [Bankr. Doc. No. 3783]

3. The bankruptcy court's order in the underlying chapter 11 cases denying Debtors' Emergency Motion for Issuance of an Order to Show Cause re: Closing of the SGM Sale, filed December 9, 2019. [Bankr. Doc. No. 3784]

4. Debtors' Stipulation re: Assumption and Assignment of Medi-Cal Provider Agreements to [SGM], filed December 9, 2019. This demonstrates that Debtors did not enter an agreement with the Department of Health Care Services until December 9, 2019. [Bankr. Doc. No. 3786]

5. The bankruptcy court's order in the underlying chapter 11 case approving

Debtors' Stipulation re: Assumption and Assignment of Medi-Cal Provider Agreements to [SGM], entered December 9, 2019. [Bankr. Doc. No. 3787]

6. Debtors' Notice re Termination of Asset Purchase Agreement with [SGM], based, inter alia, on "orders entered by the Bankruptcy Court requiring SGM to close the Sale on or before December 5, 2019[.]" This demonstrates that Debtors terminated the Asset Purchase Agreement based on their understanding that the bankruptcy court had ordered SGM to close the sale by December 5, 2019. [Bankr. Doc. No. 3899]

Respectfully submitted,

Dated: February 14, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: */s/ Gary E. Klausner*
Gary E. Klausner
Jeffrey S. Kwong

Dated: February 14, 2020

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By: */s/ Kevin D. Rising*
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EXHIBIT "1"

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

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession.	Lead Case No. 2:18-bk-20151-ER Jointly administered with: Case No. 2:18-bk-20162-ER; Case No. 2:18-bk-20163-ER; Case No. 2:18-bk-20164-ER; Case No. 2:18-bk-20165-ER; Case No. 2:18-bk-20167-ER; Case No. 2:18-bk-20168-ER; Case No. 2:18-bk-20169-ER; Case No. 2:18-bk-20171-ER; Case No. 2:18-bk-20172-ER; Case No. 2:18-bk-20173-ER; Case No. 2:18-bk-20175-ER; Case No. 2:18-bk-20176-ER; Case No. 2:18-bk-20178-ER; Case No. 2:18-bk-20179-ER; Case No. 2:18-bk-20180-ER; Case No. 2:18-bk-20181-ER; Chapter 11 Cases Hon. Judge Ernest M. Robles
☒ Affects All Debtors ☐ Affects O'Connor Hospital ☐ Affects Saint Louise Regional Hospital ☐ Affects St. Francis Medical Center ☐ Affects St. Vincent Medical Center ☐ Affects Seton Medical Center ☐ Affects O'Connor Hospital Foundation ☐ Affects Saint Louise Regional Hospital Foundation ☐ Affects St. Francis Medical Center of Lynwood Foundation ☐ Affects St. Vincent Foundation ☐ Affects St. Vincent Dialysis Center, Inc. ☐ Affects Seton Medical Center Foundation ☐ Affects Verity Business Services ☐ Affects Verity Medical Foundation ☐ Affects Verity Holdings, LLC ☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures - San Jose Dialysis, LLC Debtors and Debtors In Possession.	**DEBTORS' EMERGENCY MOTION FOR (I) ISSUANCE OF AN ORDER TO SHOW CAUSE WHY STRATEGIC GLOBAL MANAGEMENT, INC. FAILED TO CLOSE THE SALE TRANSACTION BY DECEMBER 5, 2019; AND (II) ENTRY OF AN ORDER ENFORCING PRIOR COURT ORDERS REQUIRING STRATEGIC GLOBAL MANAGEMENT, INC. TO CLOSE THE SALE TRANSACTION BY DECEMBER 5, 2019** **[RELATED TO DOCKET NOS. 2306, 3724]** Hearing Date and Time: Date: TBD Time: TBD Place: Courtroom 1568, 255 E. Temple Street Los

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EMERGENCY MOTION

Pursuant to LBR[1] 9020-1 and 9075-1, Rule 6004, and §§ 363 and 105(a), Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Cases"), respectfully request, on an emergency basis (the "Motion"), that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering Strategic Global Management, Inc. ("SGM") and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court's order [Docket No. 3724] (the "Closing Order") requiring SGM to close the sale (the "SGM Sale") pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the "APA") by no later than December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors' request for an order (a) enforcing this Court's order [Docket No. 2306] (the "Sale Order") approving the SGM Sale and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the $30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer immediate and irreparable harm without the relief requested in this Motion. The

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[1] All references to "§" herein are to sections of the "Bankruptcy Code," 11 U.S.C. §§101, *et seq.* unless otherwise noted. All references to "Rules" are to the Federal Rules of Bankruptcy Procedure. All references to "LBR" refer to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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prompt sale and transition of the Debtors' four remaining general acute care hospitals[2] is needed to prevent any deterioration in critical healthcare in underserved communities caused by accelerating employee turnover, as well as the operating losses continuing to reduce anticipated recoveries to creditors. The Debtors (i) are operating at a loss of approximately $450,000 per day, imposing significant costs upon the estates and upon creditors, and (ii) the uncertainty caused by SGM has significantly increased the rate of employee turnover at Verity's hospitals, a void filled by expensive per diem, temporary nurses and *locum tenens* physicians at a much greater cost to the estates. Finally, but crucially, the APA specifically provides that "[t]ime is of the essence." *See* APA at §§ 12.17. SGM's failure to close the Sale violates the express terms of the APA, as well as this Court's unambiguous Orders. In order to make critical decisions impacting the Hospitals and alternative plans, the Debtors must have immediate clarity on (i) whether SGM has the financial ability to proceed with the Sale transaction, and (ii) whether SGM intends to proceed with the Sale transaction in 2019. SGM steadfastly has refused to provide such critical information to the Debtors, even in the face of its utter failure to comply with this Court's prior Orders. This Court's immediate intervention is respectfully requested and required.

I.

SUMMARY OF REQUESTED RELIEF

As set forth above, the Debtors seek the entry of three orders. ***First***, pursuant to LBR 9020-1, the Debtors respectfully request that the Court issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to (a) close the SGM Sale by December 5, 2019, (b) comply with this Court's Closing Order, (c) demonstrate to the Debtors that SGM currently has the financial ability or access to sufficient capital to timely proceed with this transaction in accordance with the APA, and (d) advise the Debtors as to SGM's intention to close

[2] Specifically, the hospitals and healthcare facilities subject to the SGM Sale include St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center (including the Daly City and Coastside campuses), and St. Vincent Dialysis Center.

the transaction. Given the exigencies of the Debtors' Cases, the Debtors respectfully request that the Court reduce the 7-day opposition or response deadline set forth in LBR 9020-1(b), or provisionally issue the order to show cause and provide that parties may object to the issuance at the hearing on the order to show cause. Pursuant to LBR 9020-1, the Court is not required to hold a hearing on the Debtors' request to issue the order to show cause. *See* LBR 9020-1(d)(2). ***Second***, the Debtors respectfully request that the Court enter an order setting the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m. ***Third***, following the emergency hearing, the Debtors request entry of an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, (d) finding that the Debtors shall retain the $30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409], and (e) granting such other and further relief as the Court deems just and proper

This Motion is based upon §§ 105 and 363, Rule 6004, LBR 9020-1 and 9075-1(a), the attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8], the *Declaration of Richard G. Adcock* [Docket No. 3188], the *Declaration of Richard G. Adcock* [Docket No. 3644], the *Declaration of Carsten Beith* (the "Beith Declaration"), *Declaration of Sonia R. Martin* (the "Martin Declaration"), and the *Declaration of Elspeth Paul* (the "Paul Declaration"), which are filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, and any other admissible evidence as may properly be brought before the Court. The Debtors further request that the Court take judicial notice of all documents filed with the Court in this case that relate to the status conference held before the Court on November 26, 2019, including the Debtors' status report [Docket No. 3692], the documents filed under seal pursuant to the Court's orders [Docket Nos. 3679, 3699], and SGM's reservation of rights [Docket No. 3701].

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II.

RESPONSES

By this Motion, the Debtors have requested that the Court issue the order to show cause on an expedited basis. Any party opposing or responding to the Debtors' request that the Court issue an order to show cause pursuant to LBR 9020-1 may present such opposition or response as directed by the Court in any subsequent order.

Any party opposing or responding to any other relief requested in the Motion may present such response (the "Response") at any time before or at the hearing on the Motion. *See* LBR 9075-1(a)(8). A Response must be a complete written or oral statement of all reasons in opposition to the Motion or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the failure to file and serve a timely objection to any request for relief set forth in the Motion may be deemed by the Court to be consent to the relief requested herein.

III.

SERVICE OF MOTION

Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and Authorities, the concurrently-filed Beith Declaration, Martin Declaration and Paul Declaration, and any notice required by the Court on: (i) Strategic Global Management, Inc., (ii) the Official Committee of Unsecured Creditors, (iii) the Debtors' Prepetition Secured Creditors as defined in the Final DIP Order, (iv) the Office of the United States Trustee; and (v) any other parties on the Limited Service List set forth in the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132]. To the extent necessary, the Debtors request that the Court waive compliance with LBR 9075-1(a)(6) and approve service (in addition to the means of services set forth in such Local Bankruptcy Rule) by overnight delivery.

IV.

RESERVATION OF RIGHTS

Nothing contained herein is intended or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in

interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court's Order and close the SGM Sale by December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; and (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors request for an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the $30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

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MEMORANDUM OF POINTS AND AUTHORITIES

Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Cases"), respectfully request, on an emergency basis (the "Motion"), that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering Strategic Global Management, Inc. ("SGM") and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court's order [Docket No. 3724] (the "Closing Order") requiring SGM to close the sale (the "SGM Sale") pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the "APA") by no later than December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors' request for an order (a) enforcing this Court's order [Docket No. 2306] (the "Sale Order") approving the SGM Sale and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the $30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

The Motion is based on the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the "First-Day Declaration"), the *Declaration of Richard G. Adcock* [Docket No. 3188] ("Adcock Declaration"), the *Declaration of Carsten Beith* (the "Beith Declaration"), *Declaration of Sonia R. Martin* (the "Martin Declaration"), and the *Declaration of Elspeth Paul* (the "Paul Declaration"), which are filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, the record in the Debtors' Cases

and any other judicially noticeable facts, and other admissible evidence properly brought before the Court. In further support of the Motion, the Debtors respectfully state as follows:

I.

INTRODUCTION

Six months after this Court entered the order (the "Sale Order")[1] authorizing the Debtors to sell their four remaining general acute care hospitals[2] and St. Vincent Dialysis Center (the "Hospitals") to SGM, the Court entered its order, on November 27, 2019, obligating SGM to close the SGM Sale pursuant to the APA by December 5, 2019 (the "Closing Order").[3] The Court's Closing Order also found that there has been no material adverse effect under the APA, and that the APA does not permit SGM to appeal this Court's determination as to that issue.

Despite the clear requirements of the APA and in direct contravention of this Court's prior Orders, SGM announced that it *would not close the SGM Sale—and, then, did not close the SGM Sale—by December 5, 2019*. In a transparent attempt to delay this proceeding, frustrate the Debtors' ability to transfer the Hospitals pursuant to the APA, and manufacture a context to renegotiate the purchase price under the APA, SGM has filed three frivolous appeals. Further, SGM has taken the facially implausible position that it is entitled to a 21-day "Evaluation Period" under Section 8.6 of the APA, during which it may "determine" whether it is satisfied with the Attorney General Order that provides precisely the same protection that is set forth in Section 8.6 of the APA. Docket No. 2305-1. These actions expressly violate this Court's Orders and the APA. *See, e.g.,* APA, § 1.3 (" . . . Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order[.]").

Each day that goes by without prompt action by SGM to close this transaction harms the estates. The Debtors' estates and their constituents have already borne operating losses of

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[1] Docket No. 2306.

[2] Specifically, the Hospitals include St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center (including the Daly City and Coastside campuses).

[3] Docket No. 3723-24.

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approximately $450,000 per day waiting for SGM to close the SGM Sale. SGM's failure to timely issue offer letters has had a negative impact on employee morale. Moreover, the Debtors and third parties have expended tremendous efforts to prepare for and close the SGM Sale in reliance on the Sale Order and the Closing Order. Despite this, SGM has intentionally frustrated the closing process by refusing to participate. In addition to announcing that it would not close the SGM Sale on December 5, as ordered by the Court, throughout the week leading up to the filing of this Motion, SGM has refused to participate in the regular, pre-scheduled joint closing calls and operational transition calls, apparently based on the advice of its counsel.

By signing the APA, SGM represented and agreed that "[p]urchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement." Given the actions and inactions of SGM over the past month, which suggest SGM lacks the financial ability to close the SGM Sale, the Debtors have made repeated and direct requests that SGM state whether it has the financial ability to close the SGM Sale, and whether it intends to do so. SGM has refused to respond, attempting to distract from its apparent financial inability to perform and seeking to preserve the ability to argue at some later date that the Debtors breached the APA by deciding prematurely to distribute their assets in a different manner, *i.e.* "Plan B" as it was referred to during the November 26, 2019, status conference.

SGM is in direct violation of this Court's prior Orders. Its conduct is an effort to gain leverage against the Debtors in order to force a modification of the APA as to price and/or timing of closing. Such efforts are a manifestation of SGM's lack of good faith and fair dealing under the APA and constitute willful misconduct designed to harm the Debtors and impair the effectiveness of this Court's orders, *i.e.,* its actions have been taken in bad faith. The Debtors respectfully urge the Court to issue an order (i) enforcing this Court's Sale Order and Closing Order; (ii) ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas and Peter Baronoff, to appear in this Court, on December 11, 2019, and show cause as to why SGM failed to (a) close the SGM Sale

by December 5, 2019, (b) comply with this Court's Closing Order, (c) demonstrate to the Debtors that SGM currently has the financial ability or access to sufficient capital to timely proceed with this transaction in accordance with the APA, and (d) advise the Debtors as to SGM's intention to close the transaction; (iii) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019; (iv) finding that the Debtors may terminate the APA at any time without further notice to SGM; (v) finding that the Debtors shall retain the $30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; (vi) granting such other and further relief as the Court deems just and proper.

II.

JURISDICTION, VENUE, AND STATUTORY PREDICATES

The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Motion seeks an order of the Court enforcing the terms of its final order approving the SGM Sale [Docket No. 2306] and its order [Docket No. 3723-24] obligating SGM to close the SGM Sale, as well as to show cause to SGM for its failure to comply. The statutory predicates for this relief are §§ 363 and 105, and Bankruptcy Rule 6004. This Court "plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151, (2009); *see also In re Millenium Seacarriers, Inc*., 419 F.3d 83, 96 (2d Cir. 2005) ("A bankruptcy court retains jurisdiction to interpret and enforce its own orders . . . ." (quoting *Luan Inv. S.E., v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir.2002)).

III.

FACTUAL BACKGROUND

1. On May 2, 2019, this Court entered its *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of An Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306] ("Sale

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Order"), approving the SGM Sale pursuant to the APA. Since this Court issued its Sale Order, the Debtors have engaged in extensive, time-consuming efforts on multiple fronts to transition the Hospitals to SGM. By way of example: (i) the Debtors have sent multiple rounds of WARN notices to all employees; (ii) medical groups affiliated with the Debtors have sent termination notices to their physicians; (iii) thousands of counterparties to executory contracts and unexpired leases have relied on the Sale Order and continued to provide services in reliance on the finality of that Sale Order; (iv) the Debtors and SGM have spent almost an entire year facilitating an efficient close of the SGM Sale and developing transition plans as appropriate, including the transition of various licenses, employees, etc.; (v) the Debtors and SGM spent months successfully negotiating and reaching modified collectively bargaining agreements with all of the unions; (vi) the Debtors spent months reaching finality with the California Attorney General, the Centers for Medicare and Medicaid Services, and the California Department of Health Care Services; and (vii) created plans to shut off certain services and modify various insurance policies.

2. On October 23, 2019, the Court issued a *Memorandum of Decision Granting the Debtors' Emergency Motion to Enforce the Sale Order [Doc. No. 3188]*. [Docket 3446.] Following extensive negotiations, the Debtors and the Attorney General reached a *Stipulation Resolving "Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Sale Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief" [Docket No. 3188]*. [Docket 3572.] Accordingly, on November 14, 2019, the Court issued an *Order Granting "Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Sale Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief" [Doc. 3188]* [Docket 3611] (the "Enforcement Order").

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3. APA section 1.3 obligates SGM to close the sale "promptly but no later than ten (10) business days following the satisfaction" of all conditions precedent. On November 18, 2019, the Court issued an Order finding that: "The Debtors have complied with their obligation under the APA to obtain a final, nonappealable Supplemental Sale Order. Consequently, SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied." Docket No. 3632.

4. On November 19, 2019, the Debtors obtained a settlement with the Centers for Medicare and Medicaid Services providing for the transfer of their Medicare Provider Agreements to SGM, thereby satisfying their remaining obligations under Article 8.7 of the APA. Docket No. 3680. With respect to California Department of Health Care Services ("DHCS"), the Debtors secured an Order [Docket No. 3372] from the Bankruptcy Court authorizing the transfer free and clear of any interests asserted by DHCS, in addition to the Sale Order which terminated any creditor's recoupment rights [Docket No. 2306]. Those Orders afford equal or greater protection to SGM than any settlement could have, thereby satisfying Section 8.7. In addition, on November 22, 2019, the Debtors reached a settlement in principle with DHCS to the same effect. *See* Nov. 26, 2019 Hr'g Tr. at 10:18-24.

5. As set forth in the Debtors' status report [Docket No. 3692] (the "Status Report"), Debtors sent a letter to SGM, on November 20, 2019, stating (i) the conditions to close under the APA had been satisfied on November 19, 2019, and that (ii) the transaction should promptly close by December 5, 2019. *See* Status Report at 1. The letter requested assurances from SGM that the transaction would close by that date. *See id.*

6. On November 19, 2019, SGM's CEO, Peter Baronoff, telephoned the Debtors' investment banker and stated that SGM could not obtain sufficient financing for the transaction, contrary to Section 3.9 of the APA. [Docket No. 3644.] That telephone call immediately resulted in the Debtors' request for an order [entered at Docket No. 3646] continuing the hearing on the Debtors' motion [Docket No. 2995] for approval of its disclosure statement [Docket No. 2994]. *See* Beith Decl., ¶ 2. Recognizing that the existence of financing is not a condition to close, SGM resorted to making unfounded and self-serving assertions that the Debtors breached the APA and

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embarked on impermissible efforts to re-trade the purchase price without regard to: (i) the language in the APA; (ii) the indisputable fact that SGM's diligence period had expired in January 2019; (iii) SGM's prior representations; and (iv) the fact that all conditions of the Debtors to close had been satisfied.

7. On November 22, 2019, SGM sent the Debtors letters from Gary Klausner, Esq. of Levene, Neale, Bender, Yoo & Brill L.L.P. and Robert W. Lundy, Jr. of Hooper, Lundy & Bookman, P.C. (with enclosures), setting forth the issues that SGM had asserted amounted to a "Material Adverse Effect" under the APA [Docket No. 3705] (the "November 22, 2019 Letters").[4] The issues SGM raised at the eleventh hour were not "new"—they were all known or discoverable during the diligence period. And none of them change the inescapable conclusion that this transaction was required to close by December 5 because the Debtors and SGM negotiated the sale as an "AS IS, WHERE IS" sale under the express terms of the APA. SGM's untimely, baseless and immaterial complaints were nothing more than a transparent attempt to delay the closing and manufacture a basis for a re-trade to obtain a lower purchase price.

8. On November 26, 2019, the Court held a Status Conference. In advance of the Status Conference, SGM filed a Reservation of Rights, alleging (among other things) that "there are no genuine disputes of material fact as to the [sic] whether there have been Material Adverse Effects under the terms of the APA." [Docket 3701.] In addition, the Debtors lodged with the Court SGM's November 22, 2019 Letters. At the status conference, the Court rejected SGM's arguments, stating (among other things) that "[a]s far as the Court is concerned" SGM is the "proud owner" of the Debtors' assets as set forth in the APA, and that SGM "has an obligation to close" the transaction pursuant to the APA. (Nov. 26, 2019 Hr'g Tr. at 12:22-24, 14:10-11.)

9. On November 27, 2019, the Court issued an Order finding that, "[p]ursuant to § 1.3 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019." [Docket 3724.] The Memorandum Decision supporting that Order concluded, among other things, that (i) "Adjudication of SGM's Obligations Under the APA Does Not Require an Adversary

[4] The November 22, 2019 Letters were filed under seal pursuant to Court order [Docket No. 3699].

Proceeding," (ii) "Adjudication of SGM's Obligations Under the APA Is Not Premature," (iii) "SGM Is Not Entitled to Appeal the Bankruptcy Court's Determination Regarding a Material Adverse Effect," (iv) "No Material Adverse Effect Has Occurred," (v) "All Conditions Precedent to Closing Have Been Satisfied." [Docket 3723.] The Court further concluded that:

> SGM's contention that it is not obligated to close is a cynical attempt to extract a better purchase price. A key component of SGM's negotiation strategy is its attempt to delay as long as possible the adjudication of its obligations under the APA. The Court will not facilitate SGM's dubious tactics.
>
> * * *
>
> By presenting non-meritorious arguments as to why it is not obligated to close, SGM is holding the estates, creditors, and patients of the Hospitals hostage in an attempt to extort a better purchase price. SGM's cynical tactics are especially offensive given the significant harm that closure of the Hospitals would impose upon patients. For example, two of the Hospitals that would likely close upon failure of the SGM Sale contain large populations of long-term patients suffering from severe illnesses, all of whom would have to be relocated to other facilities.
>
> [*Id.*, pp, 6-7.]

10. On November 29, 2019, SGM filed two notices of appeal [Docket Nos. 3726, 3727] related to (i) the order granting the Debtors' motion to enforce the sale order [Docket No. 3611], and (ii) the order finding that SGM is obligated to promptly close the transaction under section 8.6 of the APA provided all other conditions to closing are satisfied [Docket No. 3633].

11. This week, beginning Monday, December 2, 2019, SGM representatives failed to participate in five pre-scheduled operations closing calls, stating that they were doing so on the advice of SGM's counsel. *See* Paul Decl., ¶ 2.

12. On December 3, 2019, the Debtors emailed SGM, expressing continued concern for the delay and the impact on the Hospitals, including that many employees no longer have confidence that SGM will purchase the hospitals given that they are still waiting for formal offers, that the Hospitals continue to flex staff and registry to manage patient care, and that vendors and the Hospitals' risk pool participants/IPAs have expressed concern that SGM does not intend to close the transaction. *See* Martin Decl., ¶ 2, Ex. A. In response, SGM announced that it would not

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close the Sale by December 5, and that it had filed a notice of appeal [Docket No. 3746] of the Court's Closing Order. *See id.*, ¶ 3, Ex. B.

13. On December 4 and 5, 2019, the Debtors sent additional demands to SGM for information and assurances bearing on whether it has the financial ability to perform the APA and whether it intends to do so. *See* Martin Decl., ¶¶ 4, 6, Exs. C, E. SGM has not provided this information to Debtors. *Id.* ¶ 8.

IV.

ARGUMENT

SGM is unquestionably in violation of this Court's Sale Order and Closing Order, and time is of the essence. Bankruptcy courts have the inherent power and authority to enforce their own orders, including levying sanctions and/or civil contempt against violating parties. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (finding that the "Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders"); *see also In re Millenium Seacarriers, Inc.*, 419 F.3d 83, 96 (2d Cir. 2005) ("A bankruptcy court retains jurisdiction to interpret and enforce its own orders[.]") (quoting *Luan Inv. S.E., v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir.2002)); *In re Azevedo*, 506 B.R. 277, 282 (Bankr. E.D. Cal. 2014); *In re Gonzales*, 512 B.R. 255, 258 (Bankr. C.D. Cal. 2014) ("Bankruptcy court[s] have always been empowered to interpret and enforce their own orders.").

Accordingly, the Debtors request the following emergency relief:

A. The Court Should Order SGM's Principals To Appear And Show Cause.

SGM did not close the SGM Sale by December 5, 2019, in direct contravention of the Court's Sale Order and Closing Order. Accordingly, the Court should order the appearance of SGM's principals and explanation of why they did not comply because they are in contempt of the Court's Order. There is no disputing that the Court's order directed SGM to close on December 5, 2019 and was, therefore, a specific and definite order of the Court. Given that fact, SGM must appear before the Court and explain why it did not comply or be held in contempt. *See, e.g., Stone v. City and County of San Francisco*, 968 F.2d 850, 856 n. 9 (9th Cir.1992) ("The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific

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and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply.").

While refusing to Close the transaction by December 5, 2019 in accordance with the Court's Closing Order, SGM has simultaneously and steadfastly refused to state whether it has the financial ability to close the SGM Sale and whether it ever intends to do so. As explained above, SGM's conduct strongly suggests that it has no intention of closing this transaction, as underscored by the recent statement of its CEO Peter Baronoff that SGM lacks the ability to secure funding at the level required for the purchase price under the APA. The Debtors have repeatedly and directly confronted SGM regarding whether it has the financial wherewithal to comply with the APA. SGM has consistently dodged those questions with the pretense that it is entitled to an alleged "Evaluation Period" under Section 8.6. SGM's position is meritless for at least three reasons.

First, the Evaluation Period contemplated by Section 8.6 is only triggered when the Attorney General is imposing conditions that *materially differ* from the conditions to which SGM agreed under the APA, i.e., the Purchaser Approved Conditions. Because the Attorney General is not imposing any such conditions, no Evaluation Period is implicated. Second, as the Court previously found, "SGM is judicially estopped from contending that it is entitled to the Evaluation Period and is not obligated to promptly close the sale" based on "its prior representations regarding its obligation to close the sale." [Docket No. 3632, pp. 4-5.] Third, even if a 21-business day Evaluation Period had been triggered (which the Debtors dispute), Section 8.6 provides that SGM "shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order" and "shall consummate the Sale" if "the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period . . . and all other conditions to closing have been satisfied." Here, as the Court has previously determined, there is a final non-appealable order, namely the Enforcement Order. [Docket No. 3611]. Obviously, filing meritless appeals is a far departure from SGM's obligation to reasonably cooperate. SGM's appeals are frivolous and designed solely to delay and frustrate these proceedings.

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SGM should be directed to immediately and clearly respond to questions regarding its financial ability to perform under the APA. By signing the APA, SGM represented and agreed that:

> 3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

See APA § 3.9. This representation, warranty and covenant does not expire, and SGM "shall be deemed to remake" it "as of the Closing Date," *i.e.,* December 5, 2019. APA, Article III. SGM has repeatedly represented to the Court and the parties that SGM intends to close this transaction in accordance with the APA. For example, in its filing dated November 11, 2019, SGM described this as a "transaction in which SGM will be paying over $600 Million," and SGM's November 25, 2019 Reservation of Rights states that "SGM continues to desire to close the transaction between SGM and Verity as described in the APA."

If SGM does not have the financial ability to close the SGM Sale, as required by Section 3.9 of the APA, then it has an obligation to inform the Court and the Debtors of that fact, so they may immediately proceed with asset distribution in an alternative manner. Accordingly, the Debtors respectfully request that Court direct the following representatives of SGM to appear in Court on December 11, 2019, to address these issues and otherwise show cause why this transaction has not close: Chairman Kali Pradip Chaudhuri, MD, Chief Executive Officer Peter Baronoff and General Counsel William Thomas.

And, to be clear, SGM's only explanation must be why it did not comply with the order; this hearing should not be an opportunity for SGM to rehash its arguments already rejected by the Court. *See, e.g., Maggio v. Zeitz*, 333 U. S. 56, 333 U. S. 69 (1948) ("It would be a disservice to the law if we were to depart from the longstanding rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed, and thus become a retrial of the original controversy. The procedure to enforce a court's order commanding or forbidding an act should not be so inconclusive as to foster experimentation with disobedience."

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B. The Court Should Find That SGM Is In Material Breach, That The Debtors May Immediately Terminate The APA And Retain The Deposit.

Finally, the Debtors respectfully request the Court issue an order finding that SGM is in material breach of the APA by failing to close the SGM Sale on December 5, 2019, as required by the APA and as specifically ordered by the Court in its Closing Order. "[A] material breach of a contract excuses further performance by the injured party and entitles that party to terminate the contract." *Pena v. GMAC Mortg., LLC*, No. CV0906939MMMJCX, 2010 WL 11519504, at *7 (C.D. Cal. Sept. 13, 2010) (citing *Pry Corp. of America v. Leach*, 177 Cal.App.2d 632, 639 (1960) and 1 B. Witkin, Summary of Cal. Law, Contracts, § 796 p. 719 (9th ed. 1990)). As a result of that material breach by SGM, the Debtors are now entitled to (i) walk away from the APA with no further notice to SGM, (ii) sue SGM for damages under APA Section 11.1 and as otherwise allowed under applicable law, and (iii) proceed with alternative plans to dispose of the assets. The Debtors respectfully request that the Court issue an Order to this effect.

In addition, the Debtors request an order that the Debtors may retain the $30 million non-refundable Deposit. Section 1.2 of the APA provides that: "The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon." Here, Sections 6.1(b) and Section 6.2 are inapplicable, and SGM has not terminated the Agreement under Section 9.2—rather, SGM has materially breached the Agreement by failing to perform. Accordingly, the Deposit is non-refundable, and the Debtors respectfully request that he Court order that the Debtors may retain it regardless of the manner in which the assets are ultimately distributed.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a),

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on an expedited basis ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court's Order and close the SGM Sale by December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; and (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors request for an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the $30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

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Dated: December 6, 2019

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SAMUEL R. MAIZEL
SONIA R. MARTIN
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

By */s/ Tania M. Moyron*
Tania M. Moyron

Attorneys for Verity Health Systems of California, Inc., *et al.*

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DECLARATION OF CARSTEN BEITH

I, Carsten Beith, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am a Managing Director and Co-Head of Health Systems M&A at Cain Brothers, a division of KeyBanc Capital Markets, investment bankers in this matter for the Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors"). I submit this Declaration in support of the *Emergency Motion for the Entry of an Order: (i) Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019; (ii) To Show Cause Why Strategic Global Management, Inc. Failed to Close Sale Transaction by December 5, 2019* (the "Motion").

2. On November 19, 2019, I received a telephone call from Peter Baronoff, the Chief Executive Officer of Strategic Global Management ("SGM"). Mr. Baronoff stated, among other comments, that SGM was not able to obtain sufficient financing to fund the sale transaction.

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

Executed this 6th day of December 2019, at New York, New York.

By: _____

CARSTEN BEITH

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DECLARATION OF ELSPETH PAUL

I, Elspeth Paul, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am an attorney licensed to practice law in the State of California and I serve as General Counsel for the Verity Health System Of California, Inc. ("VHS"). I submit this Declaration in support of the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Motion").

2. In connection with working towards closing the sale transaction with Strategic Global Management, Inc. ("SGM") pursuant to the Asset Purchase Agreement, SGM and the Debtors have participated in regular pre-scheduled calls in connection with operational works streams. This week, beginning on Monday, December 2, 2019, SGM representatives failed to participate in five pre-scheduled operations closing calls, stating that they were doing so on the advice of SGM's counsel.

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

Executed this 6th day of December 2019, at Los Angeles, California.

By: Elspeth Paul

ELSPETH PAUL

DECLARATION OF SONIA R. MARTIN

I, Sonia R. Martin, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm Dentons US LLP, counsel in this matter for the Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors"). I submit this Declaration in support of the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Motion").

2. Attached hereto as **Exhibit A** is a true and correct copy of an email I sent to Gary Klausner of Levene, Neale, Bender, Yoo & Brill L.L.P., counsel to Strategic Global Management, Inc. ("SGM"), on December 3, 2019.

3. In response, I received an email from Mr. Klausner on December 3, 2019. A true and correct copy is attached hereto as **Exhibit B**.

4. In response, I sent an email to Mr. Klausner on December 4, 2019. A true and correct copy is attached hereto as **Exhibit C**.

5. Attached hereto as **Exhibit D** is a true and correct copy of an email Mr. Klausner sent to me and others on December 5, 2019.

6. Attached hereto as **Exhibit E** is a true and correct copy of an email I sent Mr. Klausner on December 5, 2019.

7. Attached hereto as **Exhibit F** is a true and correct copy of an email and letter that Mr. Klausner sent to Mr. Maizel on December 5, 2019.

8. As of this date, Mr. Klausner has not demonstrated to the Debtors that SGM has the financial ability or access to sufficient capital to timely proceed with this transaction in accordance with that certain asset purchase agreement [Docket No. 2305-1].

/ / /

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

Executed this 6th day of December 2019, at San Francisco, California.

By: _____

SONIA R. MARTIN

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Exhibit A

December 3, 2019 Email from
Sonia R. Martin to Gary E. Klausner

From: Martin, Sonia R.
Sent: Tuesday, December 03, 2019 11:18 AM
To: 'Gary E. Klausner'
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.; Alberts, Sam J.
Subject: RE: Verity

Gary,

As set forth in my emails dated November 16 and 18, 2019, there is no basis for SGM to appeal and there is no Evaluation Period. Even if SGM were correct about the existence of an Evaluation Period (which it is not), the appeal and SGM's failure to take reasonable steps towards closing the transaction would constitute a breach of the APA ("Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order[.]").

Indeed, the Debtors believe SGM's appeals are frivolous, and we reserve the right to seek sanctions against you and your clients pursuant to FRAP 38 and 28 USC 1927. Further, it is the position of the Debtors, that as of December 6, 2019, the Deposit, as defined in the APA, will irrevocably belong to the Debtors and its use is permitted by the Final DIP Order and the Supplemental Cash Collateral Order.

Each day that goes by without prompt action by your clients towards closing this transaction is injuring the Hospitals. Employees are leaving on a daily basis as a direct result of your clients' failure to timely issue offer letters. And, as you know, the Debtors are suffering net operating losses estimated at $450,000 per day. Despite this, your clients continue to drag their feet on closing. Yesterday, you directed that they not participate on three regular, pre-scheduled closing calls -- calls that are essential to the transition of the Hospitals. Your clients are plainly in breach of APA Section 12.17, which provides that "[t]ime is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement."

The conduct of you and your clients strongly suggests that they have no intention of closing this transaction, which is consistent with Mr. Baronoff's statement two weeks ago that they lack the ability to secure funding at the level required for the purchase price under the APA. By signing the APA, your clients represented and agreed that "[p]urchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement." On the basis of the APA, the Court entered its Sale Order. Since then, you and your clients have repeatedly represented to the Court and the parties that SGM intends to close this transaction in accordance with the APA. For example, in your filing dated November 11, 2019, you described this as a "transaction in which SGM will be paying over $600 Million," and your November 25, 2019 Reservation of Rights states that "SGM continues to desire to close the transaction between SGM and Verity as described in the APA."

If these representations are no longer true, your clients owe a duty to the Court and the Debtors to say so. As an officer of the court, you also owe that duty.

> "Counsel, as an officer of the court, also owes a duty of candor to the tribunal. Model Rules of Professional Conduct Rule 3.3. This duty precludes counsel from making false statements of law or fact to the court and offering false evidence, and requires counsel to disclose controlling adverse legal authority not disclosed by opposing counsel, and facts necessary to avoid assisting the client in a criminal or fraudulent act. Id."

Hansen, Jones & Leta, PC v. Segal, 220 B.R. 434, 455 (D. Utah 1998). *See also* Cal. Rule Prof. Conduct 5-200.

The Debtors again demand that you and your clients affirm whether they have the financial ability to proceed with this transaction in accordance with the APA, and whether they intend to close the transaction. If you do not respond to this request by close of business tomorrow, the Debtors will ask the Court to schedule an emergency Order to Show Cause hearing and require your clients to respond to such questions in open court.

Sonia

Sonia R. Martin

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Bio | Website

Dentons US LLP

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From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Monday, December 02, 2019 6:26 PM
To: Martin, Sonia R. <sonia.martin@dentons.com>
Cc: Moyron, Tania M. <tania.moyron@dentons.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Montgomery, Claude D. <claude.montgomery@dentons.com>; Alberts, Sam J. <sam.alberts@dentons.com>; Gary E. Klausner <GEK@lnbyb.com>
Subject: Verity

[External Sender]

Sonia; as you are aware, SGM has filed a notice of appeal from the Bankruptcy Court's order of November 14, 2019 regarding Verity's emergency motion. We understand your position regarding the "finality" of that order and we respectfully disagree as our client had standing to appeal to order entered by the court, notwithstanding the fact that SGM did not oppose the underlying emergency motion. Ultimately the appellate court will decide this issue.
In the meantime, so that there is no confusion or misunderstanding about SGM's position on this issue, the 21 business days evaluation period under section 8.6 began on November 14; that means, if my review of the calendar is correct, the 21 business days to respond under section 8.6 will not expire until December 16, 2019.

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From: Martin, Sonia R. [mailto:sonia.martin@dentons.com]
Sent: Saturday, November 16, 2019 9:59 AM
To: Gary E. Klausner
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.; Alberts, Sam J.
Subject: FW: Verity

Gary,

As Tania stated on the record in court on Wednesday, we do not agree with SGM's position that it has a 21-day Evaluation Period.

The Evaluation Period contemplated by Section 8.6 was included to account for the possibility that the Attorney General might insist on imposing conditions that materially differ from the Purchaser Approved Conditions. Because the Attorney General is not imposing any such conditions, the provisions relating to an Evaluation Period are not implicated.

We also note that, even if a 21-day Evaluation Period had been triggered (which we do not concede), Section 8.6 provides that SGM "shall consummate the Sale" if "the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period . . . and all other conditions to closing have been satisfied." Here, we have a final non-appealable order because the only parties who could have standing to appeal have waived that right.

Sonia

Sonia R. Martin

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Bio | Website

Dentons US LLP

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From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Friday, November 15, 2019 2:09 PM
To: Maizel, Samuel R. <samuel.maizel@dentons.com>; Moyron, Tania M. <tania.moyron@dentons.com>
Cc: Gary E. Klausner <GEK@lnbyb.com>
Subject: Verity

[External Sender]

Sam, Tania; I have heard through the grapevine that Verity may be taking the position that SGM does not have (or somehow lost) the 21 day Evaluation Period provided for in section 8.6 of the APA, which started as of the entry of the supplemental sale order yesterday. Would you please let me know if this is, in fact, Verity's positions and if so, please advise me of Verity's basis for that position. Obviously, this is a time critical issue so please get back to me immediately as I have a call scheduled with SGM at 3:00 today. Thanks.

GARY E. KLAUSNER, Esq.

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Exhibit B

December 3, 2019 Email from
Gary E. Klausner to Sonia R. Martin

From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Tuesday, December 03, 2019 4:33 PM
To: Martin, Sonia R.
Cc: Moyron, Tania M.; Maizel, Samuel R.; Gary E. Klausner
Subject: Verity, SGM

[External Sender]

Sonia; in response to your email of 11:20 this morning; please be advised as follows:

1. SGM has appealed from the Court's order of November 27, 2019 regarding the December 5, 2019 closing;
2. SGM will not be closing the sale transaction on December 5, 2019 and is reserving all of its rights, claims and defenses relating to the APA;
3. SGM's failure to dispute factual or legal assertions in your email shall not be considered an admission of any such assertions;
4. SGM would very much like to engage in settlement discussions with Verity and other stakeholders to see if a solution can be reached which will allow for a sale closing to take place, and, to that end, we have sent to Dentons a proposed confidentiality stipulation which, if executed by Dentons will enable settlement discussions to commence immediately, at which time, SGM can discuss the various questions which you posed regarding the status of the transaction.

GARY E. KLAUSNER, Esq.
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Exhibit C

December 4, 2019 Email from
Sonia R. Martin to Gary E. Klausner

From: Martin, Sonia R.
Sent: Wednesday, December 04, 2019 9:30 AM
To: 'Gary E. Klausner'
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.
Subject: RE: Verity, SGM

Gary,

You have not responded to the Debtors' request that you state whether your clients "have the financial ability to proceed with this transaction in accordance with the APA, and whether they intend to close the transaction." This includes, but is not limited to, confirmation that the representations set forth in the December 3, 2018 letter issued by Kevin R. Farrenkopf, President and CEO of The Bank of Hemet, and the December 4, 2018 email from William Thomas are still accurate, and that the funds referenced in those communications remain available for use in December 2019 in connection with this transaction. The Debtors insist that you and your clients provide this information outside the context of any confidentiality agreement, either now or in court.

Your clients have no valid basis to refuse to close this transaction. They are in breach of the APA, and the Debtors will proceed accordingly. Indeed, it has become increasingly clear that SGM likely never had the financial ability to perform the APA, and has been in breach of APA Section 3.8 from the outset.

Moreover, SGM lacks standing and has waived any ability to appeal the Court's orders. Manufacturing the Evaluation Period is precisely the type of bad faith conduct with which the Court expressed concern, and which permits the Debtors to recover damages in excess of Section 11.1 of the APA.

If SGM has a proposal that it wishes the Debtors to consider, it should send that proposal immediately. Be advised that the Debtors will proceed down another path unless SGM (i) provides a meaningful, actionable offer, and (ii) demonstrates the financial ability to perform (the failure of either condition would be fatal).

We will be sending you a revised confidentiality stipulation shortly.

Sonia R. Martin

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From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Tuesday, December 03, 2019 4:33 PM

To: Martin, Sonia R. <sonia.martin@dentons.com>
Cc: Moyron, Tania M. <tania.moyron@dentons.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Gary E. Klausner <GEK@lnbyb.com>
Subject: Verity, SGM

[External Sender]

Sonia; in response to your email of 11:20 this morning; please be advised as follows:

1. SGM has appealed from the Court's order of November 27, 2019 regarding the December 5, 2019 closing;
2. SGM will not be closing the sale transaction on December 5, 2019 and is reserving all of its rights, claims and defenses relating to the APA;
3. SGM's failure to dispute factual or legal assertions in your email shall not be considered an admission of any such assertions;
4. SGM would very much like to engage in settlement discussions with Verity and other stakeholders to see if a solution can be reached which will allow for a sale closing to take place, and, to that end, we have sent to Dentons a proposed confidentiality stipulation which, if executed by Dentons will enable settlement discussions to commence immediately, at which time, SGM can discuss the various questions which you posed regarding the status of the transaction.

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Exhibit D

December 5, 2019 Email from
Gary E. Klausner to Sonia R. Martin

From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Thursday, December 05, 2019 9:58 AM
To: Martin, Sonia R.
Cc: Maizel, Samuel R.; Moyron, Tania M.; Gary E. Klausner
Subject: Verity | Weekly KPC/Verity Transaction Committee Call

[External Sender]

Sonia; a checklist call is scheduled for 10:00 today.
As you are aware, SGM is not closing the sale reflected in the APA today. SGM disputes that the notice to close set forth in Sam's letter of November 20, 2019 was effective or consistent with the APA and, notwithstanding Judge Robles order of November 27, which is now on appeal, SGM is under no contractual obligation to close today. Indeed, Verity is not, itself, prepared to close the sale today or to provide the "deliverables" and complete all of the processes necessary for closing .
Notwithstanding the foregoing, SGM has been requesting an opportunity to meet and confer with Verity and other stakeholders to attempt to resolve the disputes that have so far prevented the parties from proceeding to a closing in an organized fashion and consistent with the APA. SGM requested mediation and Verity rejected that request. SGM requested a meeting, which would be governed by applicable privileges, and Verity rejected that request. SGM submitted a proposed confidentiality stipulation to Verity yesterday, made every change that you requested, submitted a draft order to you as requested, and then was advised that Verity refused to meet and confer unless SGM first provided a proposal and financial information, not protected by any privilege.
It is apparent from your litany of threatening letters and rejection of any opportunity to salvage this transaction, that Verity has elected to attempt to force SGM into a position of breach and will pursue litigation, as opposed to participating in a process that might save the hospitals, protect the patients and avoid terminating thousands of employees.
The scheduled "checklist" call for today is clearly a sham, designed to create the appearance, although not legitimate, that Verity is still pursuing a transaction which Verity has now chosen to forego , and to attempt to obtain information for use in the eventual litigation. Accordingly, SGM sees no useful purpose in participating in such a call.

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Exhibit E

December 5, 2019 Email from
Sonia R. Martin to Gary E. Klausner

From: Martin, Sonia R.
Sent: Thursday, December 05, 2019 10:17 AM
To: 'Gary E. Klausner'
Cc: Maizel, Samuel R.; Moyron, Tania M.; Montgomery, Claude D.
Subject: In re Verity Health System of California, et al., Case No. 2:18-bk-20151-ER

Gary,

SGM still has not responded to the Debtors' request that it confirm whether it has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction in accordance with the APA, i.e., for a purchase price of $610 million. This includes, but is not limited to, confirmation that the representations set forth in the December 3, 2018 letter issued by Kevin R. Farrenkopf, President and CEO of The Bank of Hemet, and the December 4, 2018 email from William Thomas are still accurate, and that the funds referenced in those communications remain available for use in December 2019 in connection with this transaction. These are simple and direct questions that must be answered under the APA.

SGM cannot hide behind the charade of an "Evaluation Period" any longer. It is becoming increasingly clear that SGM does not have the financial ability to perform under the APA, and may never have had that ability. This is in direct contravention to the representation, warranty and covenant set forth in APA Section 3.9:

> 3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

By failing to respond to the Debtors' direct questions regarding SGM's financial ability (or lack thereof), and while still purporting to "reserve rights" under the APA, you and your clients are continuing to engage in bad faith conduct at the expense of the Debtors, as well as their patients, employees and creditors. As the Court aptly observed in its November 29, 2019 Order:

> SGM's contention that it is not obligated to close is a cynical attempt to extract a better purchase price. A key component of SGM's negotiation strategy is its attempt to delay as long as possible the adjudication of its obligations under the APA. The Court will not facilitate SGM's dubious tactics.
>
> * * *
>
> By presenting non-meritorious arguments as to why it is not obligated to close, SGM is holding the estates, creditors, and patients of the Hospitals hostage in an attempt to extort a better purchase price. SGM's cynical tactics are especially offensive given the significant harm that closure of the Hospitals would impose upon patients.

Nor are the Debtors willing to allow SGM to try to immunize itself with a nebulous "mediation agreement." The information the Debtors have requested is squarely within the scope of the APA, and the Debtors are entitled to answers under the APA and without confidentiality. The Debtors will not enter any agreement that SGM might try to use to shield the financial information we have requested. The Debtors must have the ability to promptly disclose and

act on such information in order to make critical decisions impacting the Hospitals and alternative plans for disposition of the assets. You have made it clear that the Debtors must seek the Court's immediate intervention with these issues.

As to any settlement proposal that SGM wishes to make, the protections of Rule 408 should suffice and SGM should transmit any such proposal without further delay. That said, we are continuing to discuss the proposed stipulation with the Debtors and their advisors, and will revert on that issue separately.

Sonia R. Martin

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Exhibit F

December 5, 2019 Email and Letter from Gary E. Klausner to Samuel R. Maizel

From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Thursday, December 05, 2019 4:42 PM
To: Maizel, Samuel R.
Cc: Moyron, Tania M.; Martin, Sonia R.; Montgomery, Claude D.; Koffroth, Nick
Subject: Verity
Attachments: Letter to Sam Maizel re Verity 12-5-19.pdf

[External Sender]

Sam, please see the attached letter. According to the APA, we are required to give notices to you and to Rich Adcock, however, I do not believe it would be appropriate for me to write to him directly. Would you please forward the attached to him. Thanks very much.

GARY E. KLAUSNER, Esq.
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December 5, 2019

VIA EMAIL

Samuel R. Maizel
Dentons US LLP
601 S. Figueroa Street
Suite 2500
Los Angeles, CA 90017-5704

Re: In re Verity Health Systems of California, Inc., et al., Debtors ("Verity")
Sale to Strategic Global Management, Inc. ("SGM")

Dear Sam:

The purpose of this letter is to notify Verity that Verity is in material default with respect to the Asset Purchase Agreement, which was filed with the Court on May 2, 2019 (Doc 2305) and that SGM is demanding that the immediate return of its deposit of $30 Million, with all interest earned thereon.

The Closing Condition in Section 8.7 Was Not and Continues to be Unsatisfied

Section 8.7 of the APA creates a closing condition, as follows:

"8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services ("CMS") and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services ("DHCS"), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers' Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal; provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposed of survey and certification issues as if it is the relevant Seller and no change of ownership occurred."

Notwithstanding the fact that Verity had not complied with APA section 8.7, on November 20, 2019, Verity sent SGM, through counsel, a demand for a closing of the APA transaction on or before December 5, 2019 (herein the "Closing Demand") In your letter of November 20, 2019, you stated:

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> "Yesterday, as we notified you, that the Debtors reached a settlement agreement the United States on behalf of the Department of Health and Human Services and the Centers for Medicare and Medicaid Services, allowing for the transfer of the Medicare Provider Agreement without successor liability. Consequently, SGM must close this transaction promptly, but no later than ten (10) business days from yesterday, or December 5, 2019, because all conditions to closing are satisfied. *See* APA § 1.3". (Emphasis Added.)

Your representation that "all conditions to closing are satisfied" was false. As we now know (and there is no dispute) as of November 20, 2019, Verity had not complied with the condition set forth in 8.7 because, *inter alia*, Verity had not, as of November 20, 2019, entered into a settlement agreement with DHCS which resulted in: (1) resolution of all outstanding financial defaults under any of Verity's Medi-Cal Provider Agreements, and (2) full satisfaction, discharge and release of any claims under the Medi-Cal Provider Agreements, whether known or unknown that DHCS had against the seller or purchaser.

Indeed, as you acknowledged to the Court, at the hearing on November 26, 2019, Verity had not, even as of that hearing date, entered into a settlement agreement with DHCS. Nor, had Verity entered into such a settlement agreement, as of December 5, 2019, the time Verity set for closing.

Accordingly, Verity failed, as of the date and time which Verity set for closing, to satisfy the condition set forth in § 8.7 of the APA and, was and continues to be in material default.

> Neither The Sale Order entered May 2, 2019, nor the Order Authorizing the Transfer of the Medi-Cal Provider Agreement, entered October 11, 2019, satisfies the Condition in Section 8.7.

On November 25, 2019, in recognition that Verity had failed to reach an agreement with DHCS, you sent me an email in which you contended that no such agreement was necessary; notwithstanding the clear and unambiguous language of § 8.7. Your contention was been based on the theory that the Bankruptcy Court's Order, entered on May 2, 2019, authorizing the sale to SGM, satisfied the requirements of § 8.7 because the sale generally provided for it to be free and clear. However, as you well know, DHCS had objected to the sale and, to accommodate that objection, Verity agreed, and the Sale Order so provided, for DHCS to reserve all of its rights pertaining to the assumption of the Medi-Cal Provider Agreements. The Sale Order addressed the objection that DHCS had filed to the proposed transfer of the Medi-Cal Provider Agreements, in part, as follows:

> "Nothing in this Sale Order shall apply to Medical Provider Agreements until and unless there is a court order approving a settlement between the Debtors and the DHCS or a court order resolving the DHCS's objection" (Doc. 2306 at 25 l. 6-8). (Emphasis added.)

Consistent with that reservation and the need to resolve all issues regarding assumption and assignment of the Medi-Cal provider agreement, including the issue of recoupment, Verity filed its Reply Brief (Doc 3043) on September 18, 2019 seeking an order, which was necessary to satisfy its obligation under § 8.7 with respect to the transfer of the Medi-Cal Provider Agreement.

In the Court's Memorandum of Decision, issued on September 26, 2019 the Court expressly referred to § 8.7 and the necessity for Verity to obtain an order in compliance with that section as a condition to closing.

> The Asset Purchase Agreement (the "APA") [Doc. No. 2305-1] which governs the sale of the Hospitals to SGM, provides that the sale cannot close unless issues regarding alleged financial defaults existing under each Provider Agreement have been resolved" (Doc. No. 3146 at 3, citing to footnote 5, which states: APA at par. 8.7)

Even more significantly, in the Bankruptcy Court's Order granting the relief requested by Verity, which was entered on October 11, 2019, the Court deleted the word "recoup" from the section providing for a transfer "free and clear", and the Court expressly stated that it was reserving the issue of DHCS's right to recoup for future adjudication.

> Provided, however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal Program and/or HQAF Program." (Doc. 3372 at 4:7-10, 16-20).

Not only does the Court's reservation of the recoupment issue render any argument regarding the effect of either that order or the Sale Order completely meritless, but whatever benefit that might have been achieved by the Court's October 11, 2019 Order has been nullified by the fact that the DHCS has appealed it to the U.S. District Court and that appeal has not been adjudicated.

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While we do not concede that the condition in § 8.7 could have been satisfied by a court order, as opposed to a "settlement agreement", even if Verity could have sought an order from the Bankruptcy Court resolving the recoupment issue, Verity chose not to do so.

Despite the fact that Verity was required to satisfy the section 8.7 condition by a "settlement agreement", no such settlement agreement existed as of November 20, 2019, the date of the Closing Demand and the representation that "all conditions of closing are satisfied". Thus, the demand was improper that statement constituted a material misrepresentation as of that date. Nor was any such agreement reached prior to the date and time, which Verity set, for closing of the APA on December 5, 2019.

As a consequence of the foregoing, Verity improperly and knowingly misrepresented the status of conditions to closing in your letter of November 20, 2019. In reality, all conditions to closing had not been satisfied and remained unsatisfied as of the date and time that Verity set for closing.

The foregoing is by no means the sum-total of all Verity's material defaults and failed conditions relating to the APA. However, because the issue raised here regarding § 8.7 and the Debtor's failure to comply with its requirements relating to the Medi-Cal Provider Agreements are factually and legally indisputable, SGM need not present or prove any other basis to establish Verity's material default.

Based upon the foregoing, and pursuant to § 11.2 of the APA, SGM hereby demands the immediate return of its deposit in the amount of $30 Million, plus all interest earned thereon.

Very truly yours

Gary E. Klausner

EXHIBIT "2"

FILED & ENTERED

DEC 09 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,

Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

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.

MEMORANDUM OF DECISION DENYING DEBTORS' EMERGENCY MOTION FOR ISSUANCE OF AN ORDER TO SHOW CAUSE RE: CLOSING OF THE SGM SALE

[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

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The Court has reviewed the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Application for OSC") [Doc. No. 3373]. Pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j), this matter is suitable for disposition without oral argument. For the reasons set forth below, the Application for OSC is **DENIED**.

I. Background

On November 27, 2019, the Court issued a *Memorandum of Decision Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019* (the "Closing Memorandum") [Doc. No. 3723] and an accompanying *Order (1) Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion for Approval of Disclosure Statement* (the "Closing Order") [Doc. No. 3724]. The Closing Order provided in relevant part: "Pursuant to § 1.3 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019." Closing Order at ¶ 1.

SGM[1] did not close the SGM Sale by December 5, 2019. The Debtors move for issuance of an order requiring SGM's principals, Chairman Kali Pradip Chaudhuri, MD, Chief Executive Officer Peter Baranoff, and General Counsel William Thomas, to appear and testify as to (1) why SGM did not close the SGM Sale by December 5, 2019 and (2) whether SGM has the financial ability to close the SGM Sale. The Debtors further request issuance of an order finding that: (1) SGM is in material breach of the APA by failing to close the SGM Sale on December 5, 2019, (2) the Debtors may retain SGM's $30 million good-faith deposit, and (3) the Debtors may proceed with alternative plans to dispose of the Hospitals.

II. Findings and Conclusions

Requiring SGM's representatives to testify as to SGM's reasons for not closing the SGM Sale would not increase the likelihood of the sale actually closing. By failing to close, SGM risks the loss of its $30 million good-faith deposit as well as the possibility of damages for breach of contract in an amount of up to $60 million.[2] Being compelled to offer testimony will not motivate SGM to close where the threat of the loss of up to $90 million has failed to accomplish that end. In the future, the Debtors will have the opportunity to litigate the issues of whether SGM has breached the APA and whether the Debtors are entitled to retain SGM's good-faith deposit. In the meantime, the Debtors' efforts would be better spent ensuring the health and safety of the patients at the affected Hospitals.

The prompt closing of the SGM Sale would be in the best interests of all constituents in these cases, and the Court remains hopeful that SGM will fulfill its obligation to close. However, the estates' precarious cash position requires that the Debtors have the ability to immediately explore options for the alternative disposition of the Hospitals. The Court finds that any efforts undertaken by the Debtors with respect to the alternative disposition of the Hospitals will not violate the Debtors' obligation under Article 12.1 of the APA to cooperate with SGM to

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[1] Capitalized terms not defined herein have the meaning set forth in the Closing Memorandum.
[2] *See* APA at Art. 11.1 ("If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed $60,000,000.00.").

consummate the SGM Sale; nor shall any such efforts constitute a material default by the Debtors under any other provision of the APA.

The Court will enter an order consistent with this Memorandum of Decision.

###

Date: December 9, 2019

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT "3"

Docket #3784 Date Filed: 12/9/2019

FILED & ENTERED

DEC 09 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,

Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

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.

ORDER DENYING DEBTORS' EMERGENCY MOTION FOR ISSUANCE OF AN ORDER TO SHOW CAUSE RE: CLOSING OF THE SGM SALE

[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

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For the reasons set forth in the concurrently-issued *Memorandum of Decision Denying Debtors' Emergency Motion for Issuance of an Order to Show Cause Re: Closing of the SGM Sale* (the "Memorandum of Decision"), the Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

1) The *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* [Doc. No. 3373] is **DENIED**.
2) Any efforts undertaken by the Debtors with respect to the alternative disposition of the Hospitals[1] will not violate the Debtors' obligation under Article 12.1 of the APA to cooperate with SGM to consummate the SGM Sale; nor shall any such efforts constitute a material default by the Debtors under any other provision of the APA.

IT IS SO ORDERED.

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Date: December 9, 2019

Ernest M. Robles
United States Bankruptcy Judge

[1] Capitalized terms not defined herein have the meaning set forth in the Memorandum of Decision.

EXHIBIT "4"

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Attorneys the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

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

Debtors and Debtors In Possession.

☐Affects All Debtors

☒ Affects Verity Health System of California, Inc.
☒ Affects O'Connor Hospital
☒ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital Foundation
☐ Affects St. Francis Medical Center of Lynwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects DePaul Ventures, LLC
☐ Affects DePaul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

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

Jointly Administered with:
Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
Case No. 2:18-bk-20167-ER
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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

Judge: Hon. Ernest M. Robles

STIPULATION RE: ASSUMPTION AND ASSIGNMENT OF MEDI-CAL PROVIDER AGREEMENTS TO STRATEGIC GLOBAL MANAGEMENT, INC.

[RELATED TO DOCKET NO. 2306]

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SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and among Verity Health System of California, Inc. ("Verity"), St. Francis Medical Center, a California nonprofit public benefit corporation ("SFMC"), St. Vincent Medical Center, a California nonprofit public benefit corporation ("SVMC"), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation ("SMC", collectively with SFMC and SVMC, the "Hospital Debtors", and the Hospital Debtors collectively with Verity, the "Debtors"), and the California Department of Health Care Services on its behalf and on behalf of the State of California (the "Department," and collectively with the Debtors, the "Parties").

RECITALS

Whereas, the Debtors own and operate those certain general acute care hospitals known as St. Francis Medical Center, St. Vincent Medical Center (including St. Vincent Dialysis Center) and Seton Medical Center (including its Seton Medical Center Coastside campus) (collectively, the "Hospitals") and related assets.

Whereas, Medicaid is a cooperative federal-state program that authorizes the United States Government to provide funds to participating states to administer medical assistance to individuals whose income and resources are insufficient to meet the costs of necessary medical services. The program operates by authorizing the federal Centers for Medicare and Medicaid Services ("CMS") to pay a percentage of the costs a state incurs for patient care. As a condition of receiving federal funds, the state complies with certain federal requirements. California participates in Medicaid through the California Medical Assistance Program ("Medi-Cal"), and has designated the Department as the agency responsible for its administration.

Whereas, the Hospitals have Medi-Cal provider agreements ("Medi-Cal Provider Agreements") with the Department which enable them to receive Medi-Cal payments for services provided to Medi-Cal beneficiaries. The SFMC Provider Agreement is assigned no. 148769215;

the SVMC Provider Agreement is assigned no. 1124004304; and the SMC Provider Agreement is assigned no. 1154428688.

Whereas, on August 31, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief, thereby commencing their bankruptcy cases (the "Bankruptcy Cases"), jointly administered under Bankruptcy Case No. 2:18-bk-20151-ER, under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code")[1] in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the "Bankruptcy Court").

Whereas, as described in the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* (the "Adcock Declaration") [Docket No. 8], filed on August 31, 2018, the Debtors have struggled financially to survive for decades, and currently sustain operational cash flow losses of approximately $175 million annually. The Debtors estimate that (a) secured claims in these Bankruptcy Cases total more than $602 million (including claims of various prepetition secured creditors and monies owed for debtor-in-possession ("DIP") financing obtained after the Petition Date), and (b) the total of scheduled and filed unsecured claims, including pension claims, may exceed $1.500 billion.

Whereas, the Debtors have an signed and Bankruptcy Court approved Asset Purchase Agreement and an order [Docket No. 2306] approving the sale of the Hospitals at a price of approximately $610 million, plus payment of "cure" costs associated with certain assumed leases and/or assumed contracts, pursuant to § 363 (the " SGM Sale") to Strategic Global Management, Inc. and/or one or more of its affiliated entities, including the affiliates of SGM who will operate the Hospitals (the "SGM Operating Affiliates"; with the Hospital Operating Affiliates, Strategic Global Management, Inc. and other Strategic Global Management, Inc. affiliates which are assigned any rights in connection with the SGM Sale being referred to herein collectively as "SGM").

Whereas, on February 19, 2019, the Bankruptcy Court entered its *Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective*

[1] All references to "sections" or "§" herein are to sections of the Bankruptcy Code, unless otherwise noted.

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Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder, And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances [Docket No. 1572] the ("Bidding Procedures Order").

Whereas, on March 5, 2019, the Debtors filed a *Notice of Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 1704].

Whereas, on January 25, 2019, the Department filed its *Creditor California Department of Health Care Services's Objection To: (1) Debtors' Motion for the Entry of an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2) Approving Form of Asset Purchase Agreement* [Docket No. 1353] which asserted that the Debtor had to transfer the Medi-Cal Provider Agreements as executory contracts pursuant to § 365 (the "DHCS Objection"). In the DHCS Objection, the Department asserted, among other things, that it was owed the following amounts in connection with the Hospitals, as of January 23, 2019: (a) St. Francis Medical Center - liability arising from the Hospital Quality Assurance Fees Program ("HQA Fee"), California Welfare & Institutions Code, § 14169.52(a) et. seq., in the amount of $40,647,765.00; (b) St. Vincent Medical Center (including St. Vincent Dialysis Center) - HQAF liability in the amount of $27,164,168.86; and (c) Seton Medical Center (including its Seton Medical Center Coastside campus) – HQA Fee liabilities in the amount of $31,967,260.98. In the DHCS Objection, the Department did not reflect any obligations owed to it related to the Medi-Cal fee-for-service payments in connection with the Hospitals.

Whereas, on March 22, 2019, the Department filed its *Creditor California Department of Health Care Services's Objection To Notice of Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 1879] which, among other things, asserted that the Debtor had to transfer the Medi-Cal Provider Agreements as

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executory contracts pursuant to § 365. In the DHCS March 22, 2019 Objection, the Department asserted it was owed the following amounts in connection with the Hospitals, as of March 15, 2019: (a) St. Francis Medical Center – HQA Fee liability ee, and Medi-Cal Provider Agreementsin the amount of $30,381,769.53; (b) St. Vincent Medical Center (including St. Vincent Dialysis Center) – HQA Fee liability in the amount of $21,427,707.82; and (c) Seton Medical Center (including its Seton Medical Center Coastside campus) – HQA Fee liabilities in the amount of $28,160,469.45. In the DHCS Objection, the Department did not reflect any obligations owed to it related to the Medi-Cal fee-for-service payments in connection with the Hospitals. However, the Department asserted in its Objection that the Debtors and/or the buyer (through joint and several liability) must reimburse the Department for any Medi-Cal fee-for-service overpayments and pay other debts owed to the Department.

Whereas, on March 29, 2019, the Department filed the following proofs of claim in the Bankruptcy Cases: (a) against SVMC, assigned Claim No. 62-1, asserting that it is owed $5,287,280.73, based solely on the unpaid prepetition HQA Fees; (b) against SFMC, assigned Claim No. 134-1, asserting that it is owed $7,302,038.67, based solely on the unpaid prepetition HQA Fees; and (c) against SMC, assigned Claim No. 66-1, asserting that it is owed $ 17,090,035.65, based solely on the unpaid prepetition HQA Fees.

Whereas, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Strategic Global Management, Inc. Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting Related Relief* [Docket No. 2306] (the "Sale Order"), approving a sale of the Debtors' remaining Hospitals (St. Francis Medical Center, St. Vincent Medical Center including the St. Vincent Dialysis Center, and Seton Medical Center, including Seton Medical Center Coastside Campus) to Strategic Global Management, Inc. (i.e. the SGM Sale). The Sale Order continued the hearing on the DHCS Objection, and reserved judgment on issues related to the transfer of the Medi-Cal provider agreements (i.e., whether the Medi-Cal provider agreement would be transferred as a statutory

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license or an executory contract) pending resolution of that issue. *Id.*

Whereas, on September 11, 2019, the Department filed its *Creditor California Department of Health Care Services's Supplemental Objection To (1) Debtors' Motion for the Entry of an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2) Approving Form of Asset Purchase Agreement* [Docket No. 3043] which, among things, asserted that the Debtor had to transfer the Medi-Cal Provider Agreements as executory contracts pursuant to § 365. In the DHCS September 11, 2019 Objection, the Department asserted it was owed the following amounts in connection with the Hospitals, as of September 6, 2019: (a) St. Francis Medical Center – HQA Fee liability arising from the HQA Fee Program, California Welfare & Institutions Code, § 14169.52(a) et. seq., and Medi-Cal Provider Agreementsin the amount of $3,835,489.67; (b) St. Vincent Medical Center (including St. Vincent Dialysis Center) – HQA Fee liability in the amount of $6,565,679.74; and (c) Seton Medical Center (including its Seton Medical Center Coastside campus) – HQA Fee liabilities in the amount of $16,927,759.87. In addition, in the DHCS September 11, 2019 Objection, the Department claimed the following fee-for-service overpayments: (a) $24,254,503.36 in fee-for-service overpayments to St. Francis Medical Center for fiscal year July 1, 2016, through June 30, 2017, (b) $4,205.25 for fee-for-service overpayments to Seton Medical Center for fiscal year July 1, 2016 through June 30, 2017, and (c) $662,327.67 in overpayments to St. Francis Medical Center for supplemental reimbursements under the Supplemental Reimbursement for Construction Renovation Reimbursement Program. The September 11, 2019 supplemental objection asserted that (i) the Debtors had to transfer the Medi-Cal Provider Agreements as executory contracts pursuant to § 365; (ii) the Debtors had to pay all outstanding HQA Fee; (iii) the Debtors or SGM would have to reimburse DHCS for any outstanding obligations between the Debtors and DHCS; and (iv) the Debtors would have to escrow $70 million for 36 months for any potential overpayment which DHCS might subsequently discover, and SGM would have to assume liability for the excess amount if $70 million proved insufficient.

Whereas, on September 26, 2019, the Court entered its Memorandum Opinion [Docket

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No. 3146] (the "Memorandum Opinion") which expressly held that the provider agreements are not contracts, and therefore section 365 does not apply, and that the "Provider Agreements may be sold free and clear of the liabilities which DHCS contends attach to the Provider Agreements. This includes the alleged liabilities for approximately $30 million in unpaid HQA Fees and $25 million in Medi-Cal overpayments."

Whereas, on October 11, 2019 the Bankruptcy Court entered an order [Docket No. 3372] (the "Medi-Cal Transfer Order"), which provides "DHCS shall not adjust, offset, lien or recoup any payments owing to SGM and other SGM affiliates (collectively, "SGM Buyers") which are assigned any rights in connection with the transfer of the Medi-Cal Provider Agreements … and the SGM acquisition of the Hospitals and St. Vincent Dialysis Center (collectively, the "Assets") pursuant to the Sale Motion ("SGM Sale") after the transfer of the Assets (the "Transfer Effective Date"), or make any claims against any of the SGM Buyers or any of their assets, including, without limitation, any assets acquired by any of the SGM Buyers pursuant to the SGM Sale, for any obligations, liabilities, claims or other interests against the Debtors related to periods on or before the Transfer Effective Date ("Pre-Transfer Effective Date Liabilities") including without limitation for Pre-Transfer Effective Date Liabilities under or related to (a) the Medi-Cal Program, and (b) without prejudice to the rights of the Debtors or the SGM Buyers as provided for in the Asset Purchase Agreement [Docket No. 2305-1] by and among the Debtors and SGM, the Hospital Quality Assurance Fees Program, California Welfare & Institutions Code, § 14169.52(a) et. seq. or similar or successor statutes ("HQA Fee Program"); provided however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and/or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal program and/or HQA Fee Program. None of the SGM Buyers shall be required to execute the Successor Liability Form, or otherwise assume or accept responsibility, for or with respect to any Pre-Transfer Effective Date Liabilities, in conjunction with the completion of the SGM Sale and to effectuate the assignment or other

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transfer of any Medi-Cal Provider Agreements to the SGM Buyers in connection with the SGM Sale, or otherwise as a condition or requirement for any of the SGM Buyers to participate in the Medi-Cal Program or the HQA Fee Program, provided, however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and/or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal program and/or HQA Fee Program."

Whereas, the Department asserts that, in the aggregate, it is owed $23,290,200.27 by Seton Medical Center and St. Vincent (as of September 24, 2019) and $13,528,354.37 by St. Francis (as of September 24, 2019), all solely related to unpaid HQA Fees. Whereas, the Debtors assert that all HQA Fees have been paid or will be paid in the ordinary course of business during the Bankruptcy Cases and no amounts are presently due and owing to the Department.

Whereas, according to the Debtors' calculations, they currently have no outstanding financial obligations to the Department for fee-for-service or supplemental overpayments pursuant to the Medi-Cal Provider Agreements. However, the Debtors are aware that the Department alleges the following obligations: (a) alleged obligations related to recent audit of fiscal year 2016-2017 fee-for-service payments related to SFMC, and (b) alleged overpayment findings by the Department with respect to the Medi-Cal electronic health records ("EHR") incentive payments of $209,373 to SFMC and $18,107 to SMC. With regard to the former, Verity received audit findings alleging overpayments of $25,176,471 for SFMC for the fiscal period ending June 30, 2017, but believes these amounts to be grossly overinflated and an unlawful overreach by the Department's auditors. With regard to the latter, these amounts are purportedly associated with an audit of the Hospitals' first year of participating in the Medi-Cal EHR program (2011) and the Debtors strongly dispute these findings.

Whereas, any outstanding financial obligations of the Hospital Debtors to the Department for unpaid quality assurance fees or other fees owing under HQA Fee program relating to the Hospitals that existed prior to the Medi-Cal Transfer Effective Date are referred to herein as the

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"HQA Fee Claims" and any financial obligations of the Hospital Debtors related to overpayment amounts owed with respect to fee-for-service or supplemental payments pursuant to the Medi-Cal Provider Agreements relating to the Hospitals (other than the HQA Fee Claims), including without limitation overpayments that have been asserted by the Department or its fiscal intermediary by sending a written communication that is received by the Hospitals prior to the Medi-Cal Transfer Effective Date and overpayments which would be asserted after such date and arise from cost report settlements and other reconciliations of payments for services rendered or periods of time prior to the Medi-Cal Transfer Effective Date, are referred to herein as the "Medi-Cal Claims." For purposes of this Stipulation, the effective date of the transfer of the Hospitals' Medi-Cal Provider Agreements to the SGM Operating Entities is the "Medi-Cal Transfer Effective Date," even if the agreement concerning such assignment and assumption is made as of the Closing.

Whereas, pursuant to Code of Federal Regulations, title 42, section 438.6(c)(1)(iii), CMS has authorized the Department to require each applicable Medi-Cal managed care plan to make Hospital directed payments to qualified network providers that provide eligible hospital services for the periods covering July 1, 2017, through June 30, 2019. Pursuant to that approval, based on an analysis of actual network utilization, the Department will determine a uniform dollar add-on increment for purposes of the Hospital directed payments to be made to qualified network private hospitals for eligible services rendered during the approval period. Once the Department has determined the uniform dollar add-on increment and obtained associated federal approvals, if necessary, it "will direct [Medi-Cal managed care plans] to make enhanced payments for contracted services utilized within the class of private hospitals."

Whereas, consistent with CMS' approval of the private hospital directed payment program and of Hospital pass-through payments pursuant to 42 C.F.R. §438.6(d), the Department has agreed that the applicable Medi-Cal managed care plans serving Los Angeles County and San Mateo County (collectively, the "Plans") should make the federally approved Medi-Cal managed care supplemental payments associated with dates of service on or prior to the Medi-Cal Transfer

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Effective Date to the Hospital Debtors, which are eligible in connection with the Hospitals based on their status as the private operators of the Hospitals for dates of service on or prior to the Medi-Cal Transfer Effective Date.

Whereas, upon the SGM Sale of the Hospitals and effective as of Closing, the Hospital Debtors and the SGM Operating Entities may enter into an Interim Management Agreement for each of the Hospitals (collectively, the "IMAs"), if such SGM Operating Entities are unable to obtain their own requisite general acute care hospital licenses issued by the California Department of Public Health ("CDPH") and pharmacy permits issued by the California State Board of Pharmacy ("BOP") (collectively the "New Licenses") for the respective Hospital by Closing, pursuant to which each SGM Operating Entity will manage the respective Hospital until it obtains the New Licenses. The date by which all requisite New Licenses are issued for the Hospitals, whether at Closing or thereafter, is referred to as the "Licensure Date." For purposes of this Stipulation, the Licensure Date shall also constitute the effective date of the transfer of the Hospitals' Medi-Cal Provider Agreements to the SGM Operating Entities (the "Medi-Cal Transfer Effective Date"), even if the agreement concerning such assignment and assumption is made as of the Closing.

Whereas, if the Hospital Debtors and the SGM Operating Entities enter into the IMAs, the Hospital Debtors will maintain a possessory interest in the Hospitals and Hospitals' premises pursuant to a Leaseback Agreement effective as of Closing, and continuing until the Transfer Effective Date.

Whereas, SGM Operating Entities will makes offers of employment, effective as of Closing, to substantially all of the Hospitals' employees and, if the Hospital Debtors and the SGM Operating Entities enter into IMAs, then the SGM Operating Entities may, for the term of the IMAs, lease back to the Hospitals, as needed, any employees necessary to satisfy the applicable regulatory requirements.

Whereas, if the Hospital Debtors and SGM Operating Entities enter into the Leaseback Agreement and IMAs, the term of such agreements will run from the Closing until the date

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immediately preceding Licensure Date (the "IMA Term"), at which time the Pharmacy Assets will transfer to the SGM Operating Entities and the SGM Operating Entities will operate the Hospitals pursuant to the New Licenses.

Whereas, SGM is willing to have the SGM Operating Entities acquire the Medi-Cal Provider Agreements as of the Licensure Date, but in doing so SGM is unwilling to incur any exposure for liability under the Medi-Cal Provider Agreements, or otherwise for any Medi-Cal Claims, HQA Fee Claims, or False Claims, for goods and services provided, and otherwise for actions or related to periods, prior to the Medi-Cal Transfer Effective Date, or to otherwise assume any obligations or liabilities of the Debtors other than those expressly provided for in the Purchase Agreement related to the SGM Sale.

Whereas, the Debtors and SGM expected the SGM Sale of the Hospitals to close on or about December 5, 2019 (the "Closing").

Whereas, on November 22, 2019, the Debtors and the Department reached an agreement in principle concerning the foregoing.

Whereas, this Agreement will go in to effect immediately after Closing, and will be effective as of the effective date of the Closing ("Effective Date").

NOW, THEREFORE, pursuant to the agreements reached in connection therewith, and in consideration of the mutual covenants, agreements and promises set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound as provided for herein, hereby agree as follows.

1. Definitions.

1.1 "Hospital Quality Assurance Fee" or "HQA Fee" program shall mean the program established by article 5.230 of chapter 7 of part 3 of division 9 of the Welfare and Institutions Code.

1.2 "Medi-Cal managed care supplemental payments" shall mean the payments made by Medi-Cal managed care plans pursuant to their contracts with the Department and in

accordance with Welfare and Institutions Code section 14169.57 that are either "Hospital directed payments" or "Hospital pass-through payments."

1.3 "Hospital directed payments" means the Medi-Cal managed care supplemental payments approved by CMS pursuant to Code of Federal Regulations, title 42, section 438.6(c).

1.4 "Hospital pass-through payments" means the Medi-Cal managed care supplemental payments approved by CMS pursuant to Code of Federal Regulations, title 42, section 438.6(d).

2. The Agreement.

2.1 The Debtors agree that the Debtors will (a) transfer the Medi-Cal Provider Agreements to SGM pursuant to § 365, with the effective date of such transfer being on the Medi-Cal Transfer Effective Date; (b) pay to the Department any unpaid HQA Fees, for Phases V and VI of the HQA Fee Program that are due and owing as of the Medi-Cal Transfer Effective Date; (c), as the "cure" required by § 365, allow the Department to recoup up to Ten Million Dollars ($10,000,000.00) (the "Allowed Offset Amount") from payments otherwise owed to the Debtors for fee-for-service medical care provided by the Debtors to Medi-Cal beneficiaries, provided, however, that if the Department has offset more than the Allowed Offset Amount, any amounts in excess will reduce, dollar for dollar, the Debtors' obligation to pay, as set forth in subsection 2.1(d) below; and (d) allow the Department an allowed administrative expense claim pursuant to § 503(b)(1)(A) in the amount of Thirty Million Dollars ($30,000,000.00) (the "Medi-Cal Settlement Amount") payable pursuant to the following schedule: (i) Five Million Dollars ($5,000,000.00) upon Bankruptcy Court approval of this Settlement Agreement, but in no event prior to the Effective Date; (ii) Fifteen Million Dollars ($15,000,000.00) upon the Debtors receipt of the funds currently escrowed pursuant to the sale of assets to Santa Clara County which is expected to be released in or about March 2020; and (iii) Ten Million Dollars ($10,000,000.00) to be paid from funds paid to the Debtors pursuant to the Hospital Quality Assurance Fee program and related to O'Connor Hospital and Saint Louise Regional Hospital which is expected to be received by the Debtors on or before June 2021, to satisfy any and all Medi-Cal Claims, which

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payment will be the Department's sole remedy for all such Medi-Claims arising for the period prior to the Medi-Cal Transfer Effective Date. For the avoidance of doubt, the Allowed Offset Amount and the Medi-Cal Settlement Amount are the cure amounts to be paid pursuant to § 365 for Medi-Cal Claims and constitute the sole remedies available to the Department for the recovery of Medi-Cal Claims. The Department cannot otherwise seek payment from or recourse against SGM or against any asset of SGM, including without limitation, any assets acquired by SGM from the Debtors, for Medi-Cal Claims or HQA Fee Claims and any other liabilities that were due and owing before the Medi-Cal Transfer Effective Date.

2.2 The Parties agree to jointly request that the Bankruptcy Court vacate the Memorandum Opinion and the Medi-Cal Transfer Order.

2.3 The covenants of the Parties herein, including without limitation the preceding agreements by the Debtors and the Department related to the Medi-Cal Settlement Amount, shall be effective as of the Effective Date, provided that the Bankruptcy Court has approved this Agreement and the Closing has occurred.

2.4 The Department agrees that it will provide the Debtors and SGM, not later than five (5) business days prior to the Medi-Cal Transfer Effective Date, a closing Medi-Cal payment demand ("Medi-Cal Payment Demand") which sets forth the amount, if any, of Phases V and VI HQA Fees that are due and owing as of the Medi-Cal Transfer Effective Date by the Debtors pursuant to subsection 2.1(b) above in this paragraph. The Debtors shall pay to the Department the amount reflected in the Medi-Cal Payment Demand as applicable, on or before the Medi-Cal Transfer Effective Date, and upon such payment all HQA Fees that were due and owing before the Medi-Cal Transfer Effective Date shall be deemed to have been fully paid, in full satisfaction of Debtors' payment obligations pursuant subsection 2.1(b) of this Agreement. For the avoidance of any doubt, the Department shall look solely to Debtors for the payment of all outstanding Phases V and VI HQA Fees that are due and owing as of the Medi-Cal Transfer Effective Date.

2.5 The Department agrees that the Debtors' commitment to (a) allow the Allowed Offset Amount, and (b) pay the HQA Fees and Medi-Cal Settlement Amount referenced above

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shall constitute a "cure" under § 365, and any otherwise applicable law, statute or regulation, of all outstanding financial defaults arising under or in connection with the Medi-Cal Provider Agreements and the services provided and requests for payment made thereunder through the Medi-Cal Transfer Effective Date; provided, however, that SGM shall succeed to the quality history associated with the relevant Provider Agreement assigned and shall be treated, for purposes of survey and certification issues, as if it is the relevant owner and no change of ownership occurred. For the avoidance of doubt, once the Medi-Cal Provider Agreements are assigned to SGM (i.e. on the Medi-Cal Transfer Effective Date), the Department is authorized to adjust all payments to SGM to account for the liabilities and any overpayments and underpayments relating to services performed by SGM after the Medi-Cal Transfer Effective Date and for HQA Fees that become due and owing after the Medi-Cal Transfer Effective Date. Notwithstanding the foregoing or any other term in this Agreement, under no circumstances shall the Department adjust, offset, or recoup any payments owing to SGM (including without limitation the SGM Operating Entities) after the Medi-Cal Transfer Effective Date, or make any claims against SGM (including without limitation the SGM Operating Entities) or any of their assets, including, without limitation, any assets acquired by SGM from the Debtors, for any Medi-Cal Claims and for any HQA Fee obligations that are due and owing before the Medi-Cal Transfer Effective Date. SGM and its Operating Entities will not be liable for any Medi-Cal Claims and for any HQA Fee obligations that are due and owing before the Medi-Cal Transfer Effective Date. Provided the SGM Operating Entities file Provider Enrollment Applications and/or the equivalent forms necessary to effectuate a facility change of ownership for Medi-Cal purposes, the Department further agrees that SGM shall not be required to execute the Successor Liability Form or Financial Reponsibility Agreement for Medi-Cal Claims and HQA Fees that were due and owing before the Medi-Cal Transfer Effective Date in conjunction with the completion of the SGM Sale and to effectuate the assignment of the Medi-Cal Provider Agreements to the SGM Operating Entities, and that the SGM Operating Entities shall nonetheless be permitted to continue to bill for goods and services provided by the Hospitals

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covered by Medi-Cal Provider Agreements through the IMA Term, and thereafter until the SGM Operating Entities' enrollment in the Medi-Cal program are confirmed.

2.6 Prior to the Medi-Cal Transfer Effective Date, all fee-for-service supplemental payments made under the HQA Fee Program will be paid by the Department to the Hospital Debtors at a designated account when due, without regard to the status of its respective license at the time of the payment. After the Effective Date, all fee-for- service supplemental payments made under the HQA Fee program will be paid to the SGM Operating Entities at the accounts designated by the SGM Operating Entities, as long as the SGM Operating Entities file Provider Enrollment Applications with the Department and/or the equivalent forms necessary to effectuate a facility change of ownership for Medi-Cal purposes. However, the supplemental payments will be paid only after the Debtors paid any and all HQA Fees for Phases V & VI that were due and owing before the Medi-Cal Transfer Effective Date. The supplemental payments to be paid to the Debtors will be deducted dollar-for-dollar for any HQA Fee balance that was due and owning before the Medi-Cal Transfer Effective Date, provided however that no such deductions may be made against payments due and owing to SGM after the Medi-Cal Transfer Effective Date.

2.7 The Department expects the applicable Medi-Cal managed care plans, including those serving Los Angeles County and San Mateo County, to make applicable Medi-Cal managed care supplemental payments, which may include hospital directed payments and hospital pass-through payments, to the Hospital Debtors for dates of service from January 1, 2017 to the Effective Date for which they are eligible in connection with the Hospitals. The Department expects the applicable Medi-Cal managed care plans, including thoseserving Los Angeles County and San Mateo County, to make authorized Medi-Cal managed care supplemental payments, which may include Hospital directed payments and Hospital pass-through payments, to the SGM Operating Entities (which will be on behalf of the Hospital Debtors during the IMA Term if applicable) for dates of service on or after the Effective Date for which they are eligible in connection with the Hospitals.

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2.8 The Department further agrees that the payments to be made pursuant to Section 2.1 above are in full satisfaction, discharge and release of any and all claims against the Debtors, and the Hospitals or SGM arising under or related to (a) the Medi-Cal Program, including without limitation all Medi-Cal Claims and the HQA Fee claims, and (b) the California False Claims Act, and related statutes, in each case for all for goods or services, and otherwise for actions or related to periods, on or before the Medi-Cal Transfer Effective Date , whether such claims are known or unknown, liquidated, or contingent (the "Settlement Release"). The Department further agrees that, in consideration for the commitment by Debtors to make the payments pursuant to Sections 2.1 and 2.4, and the Department's resulting rights in relation thereto, the Settlement Release applies to, and is for the benefit of, SGM (including without limitation the SGM Operating Entities) without condition and whether or not the Debtors timely make such payments.

2.9 During the Bankruptcy Cases, and on and prior to the Medi-Cal Transfer Effective Date, the Department agrees to continue to pay the Hospital Debtors for Medi-Cal services by the Hospitals in accordance with federally approved State plan methodologies and customary trade terms, and the Hospital Debtors agree to continue to provide care to Medi-Cal beneficiaries at the Hospitals in accordance with the Medi-Cal Provider Agreements, and all applicable federal and state laws and regulations.

2.10 All avoidance actions and other causes of action arising under Chapter 5 of the Bankruptcy Code, including, but not limited to, claims or causes of action pursuant to §§ 547 and 548, that could be asserted by the Hospitals are waived by the Debtors, their bankruptcy estates, any and all successors, chapter 7 trustees, and any post-confirmation creditor litigation trust.

2.11 Debtors will waive and withdraw their appeal of the findings of the Department's audit of SFMC's cost report for fiscal year period July 1, 2016, through June 30, 2017. In addition, Debtors will waive any and all of its potential or existing rights to appeal the existing or potential audit findings and resulting Medi-Cal overpayment liabilities.

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2.12 Notwithstanding anything to the contrary in this Agreement, if the Debtors or the Department are in breach of this Agreement, the respective party's sole remedy shall be the right to seek to specifically enforce this agreement, including without limitation the Department's right to seek the payments required pursuant to Section 2.No breaches by any Party shall give rise to a right to terminate this Agreement by the other Parties, which termination rights are hereby waived by the Parties to the fullest extent legally permissible. Notwithstanding the preceding or any other term herein to the contrary, the rights, benefits, waivers and releases in favor of, or for the benefit of, SGM provided herein shall in any case remain in full force and effect notwithstanding any breach by the Debtors.

2.13 Nothing in this Agreement shall affect any obligations of the Department, or the rights of the SGM Operating Entities, with respect to the processing of the assignment of the Medi-Cal Provider Agreements and/or enrollment of the SGM Operating Entities in the Medi-Cal Program for the Hospitals, and the Hospitals' continued participation in the HQA Fee Program.

2.14 The Bankruptcy Court has jurisdiction over any dispute arising from or relating to this Agreement.

2.15 Nothing contained in this Agreement is intended or shall be deemed to release, waive or otherwise impair any claims of the Department or its successors or assigns, against: (1) any insurance carrier of the Debtors; and (2) any person or entity released by any of the Parties to the extent they are acting in any capacity other than in connection to their business dealings with the Debtors. In addition, and for avoidance of doubt, nothing in this Agreement releases any person or entity not identified or described in this Agreement as being a person or entity receiving a release. SGM and its affiliates are entitled to the full benefit of all of the releases and other terms contained in this Agreement without restriction, condition or limitation.

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3. Miscellaneous Provisions.

3.1 The Parties executing this Agreement do so without admitting any fault or liability whatsoever. No term or condition of this Agreement is intended to be or shall be deemed or construed as an expression of fault or liability.

3.2 This Agreement contains the entirety of the agreement reached among the Parties pertaining to the subject matter set forth herein. This Agreement supersedes all prior and contemporaneous oral and written agreements and discussions between or among the Parties except as set forth herein. This Agreement, or any provision hereof, may not be waived, amended or revoked, or the ongoing obligations of any Party terminated, except by a further writing signed by all such Parties and the County.

3.3 This Agreement is the product of negotiation by and among the Parties, executed voluntarily and without duress or undue influence on the part of or on behalf of any Party hereto. Each of the Parties acknowledges that it has had the opportunity to be represented by its own independent counsel in connection with this Agreement and the transactions contemplated by or referred to in this Agreement. Hence, in any construction to be made of this thereof, the same shall not be construed against any Party.

3.4 This Agreement may be executed in any number of counterparts, a complete set of which shall constitute a duly executed original, and fax or electronic signatures shall be treated as originals for all purposes irrespective of any jurisdiction's best evidence rule.

3.5 The failure or delay on the part of any Party to enforce or exercise at any time any of the provisions, rights or remedies in this Agreement shall in no way be construed to be a waiver thereof, nor in any way to affect the validity of this Agreement or any part hereof, or the right of such Party to thereafter enforce each and every such provision, right or remedy. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

3.6 Each Party shall pay its own attorneys' fees, costs and expenses in connection with the preparation, negotiation and execution of this Agreement. However, in the event of any beach

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or default of any of the terms and provisions of this Agreement or any disputes regarding interpretation or enforcement of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs, in addition to any other award.

3.7 This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law.

3.8 Subject to obtaining approval from the Bankruptcy Court as set forth below, each Party hereto hereby represents and warrants to the other Parties that the undersigned representative of such Party has authority to execute this Agreement and to bind such Party to the terms hereof. Without limiting the preceding, the Department represents that the undersigned representative of the Department is executing this Agreement for both the Department and the State of California and has the authority to do so, and to bind both the Department and the State of California to this Agreement. Each Party represents and warrants to the other Parties that this Agreement is fully enforceable by the other Parties (including, as applicable, by SGM as an express beneficiary of this Agreement) against such Party without the requirement of any consent, agreement or other action of any other party, agency or entity.

3.9 Each of the Parties hereto acknowledges that no other Party, nor any agent nor any attorney of any other Party has made any promise, representation or warranty whatsoever, express or implied, not contained herein or therein concerning the subject matter hereof to induce said Party to execute or authorize the execution of this Agreement, and each of the Parties hereto further acknowledges that said Party has not executed or authorized the execution of this Agreement in reliance upon any such promise, representation or warranty not contained herein or therein.

3.10 The Department hereby represents that it is unaware of any pending litigation, investigations or claims by any other parties against or related to the Hospital Debtors and Hospitals under the federal False Claims Act, the California False Claims Act or similar statutes.

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3.11 The Parties hereby agree to the following process regarding approval and consummation of this Agreement:

3.11.1 The Debtors shall submit this Agreement to the Bankruptcy Court for final approval in accordance with Federal Rule of Bankruptcy Procedure 9019 within one (1) day of the date of execution of the Agreement by all of the Parties (the "Execution Date").

3.11.2 The Department shall support entry of an order approving the Agreement in good faith, including, among other things, by not objecting to or otherwise commencing any proceeding or taking any other action opposing the terms or implementation of this Agreement or any order approving this Agreement, except as may be consistent with the terms hereof.

3.11.3 If the Bankruptcy Court declines to approve this Agreement despite the best efforts of the Parties to obtain such approval, then (1) this Agreement and its representations and statements shall be null and void and of no force or effect, and (2) the Parties' respective rights shall be fully reserved and the Parties shall be restored to their respective positions, *status quo ante*, as existing immediately prior to the Execution Date without prejudice to the passage of time.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of December __, 2019.

Date Signed: December ___, 2019

Verity Health System of California, Inc.

By:_____
Name:

Title:

Date Signed: December ___, 2019

Saint Francis Medical Center

By:_____
Name:

Title:

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Date Signed: December ___, 2019

Saint Vincent Medical Center

By:_____
Name:

Title:

Date Signed: December ___, 2019

Seton Medical Center

By:_____

Name:

Title:

Date Signed: December 9, 2019

California Department of Health Care Services

By: Richard Figueroa
Name:

Title: Acting Director, DHCS

///

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APPROVED AS TO FORM AND CONTENT:

DENTONS US LLP
SAMUEL R. MAIZEL
JOHN A. MOE, II
TANIA MOYRON

By: _____

Counsel for the Debtors

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
KENNETH K. WANG

By: _____

Counsel for the Department

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EXHIBIT "5"

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TANIA M. MOYRON (Bar No. 235736)
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Attorneys for the Chapter 11 Debtors and Debtors In Possession

FILED & ENTERED

DEC 09 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

CHANGES MADE BY COURT

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

In re

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

Lead Case No. 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

Hon. Ernest M. Robles

ORDER APPROVING STIPULATION RE: ASSUMPTION AND ASSIGNMENT OF MEDICAL PROVIDER AGREEMENTS TO STRATEGIC GLOBAL MANAGEMENT, INC.

[RELATED DOCKET NOS. 2306, 3786]

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The Court, having reviewed the *Stipulation Re: Assumption And Assignment Of Medi-Cal Provider Agreements to Strategic Global Management, Inc.* (the "Stipulation"), filed as Docket No. 3786, entered into by and among Verity Health System of California, Inc., St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, a California nonprofit public benefit corporation, and Seton Medical Center, a California nonprofit public benefit corporation, on the one hand, and the California Department of Health Care Services on its behalf and on behalf of the State of California, on the other hand, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

A. The Stipulation and the terms therein are approved.

B. This Court shall retain jurisdiction to hear and resolve any disputes arising under the Stipulation.

C. ~~This Court will vacate its~~ The Memorandum of Decision (Docket No. 3146) and *Order Authorizing Debtors to Sell Medi-Cal Provider Agreements, Free and Clear of Interests Asserted by the California Department of Health Care Services, Pursuant to 11 U.S.C. §§ 363(b) and (f)(5)* (Docket No. 3372) are hereby VACATED.

IT IS SO ORDERED.

###

Date: December 9, 2019

Ernest M. Robles
United States Bankruptcy Judge

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EXHIBIT "6"

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Attorneys for the Chapter 11 Debtors and Debtors In Possession

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

In re

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

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

Jointly Administered with:
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Case No. 2:18-bk-20167-ER
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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-20171-ER

Chapter 11 Cases
Hon. Ernest M. Robles

NOTICE RE TERMINATION OF ASSET PURCHASE AGREEMENT WITH STRATEGIC GLOBAL MANAGEMENT, INC.

[RELATES TO DOCKET NO. 2306]

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PLEASE TAKE NOTICE that, commencing on November 20, 2019, Verity Health System of California, Inc. and certain of its affiliates (collectively, the "Debtors") sent Strategic Global Management, Inc. ("SGM") correspondence regarding satisfaction of the conditions in that certain asset purchase agreement [Docket Nos. 1279 and 2305-1] (the "APA") and the requirement to close the related sale (the "Sale") on December 5, 2019. The Court had previously authorized the Sale to SGM, pursuant to that *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Strategic Global Management, Inc. Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting Related Relief* [Docket No. 2306].

PLEASE TAKE FURTHER NOTICE that, after further correspondence and orders entered by the Bankruptcy Court requiring SGM to close the Sale on or before December 5, 2019, [*see* Docket Nos. 3723, 3724], SGM failed to close the Sale.

PLEASE TAKE FURTHER NOTICE that the Debtors provided SGM with further notice of SGM's material breaches under the APA and sent a notice to SGM terminating the APA, as a result of SGM's failure to timely close the Sale, effective as of December 27, 2019.

Dated: January 3, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By */s/ Tania M. Moyron*
Tania M. Moyron

Attorneys for the Chapter 11 Debtors and Debtors In Possession

CERTIFICATE OF SERVICE

1. I hereby certify that on February 14, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Central District of California using the CM/ECF system.

2. I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.

3. I further certify that some of the parties of record to this appeal may not have not consented to electronic service. I have served the foregoing documents by the means set forth below:

Courtesy Copies via Personal Delivery
Chambers of the Hon. Dale S. Fischer
First Street Courthouse
350 West 1st Street
Courtroom 7D
Los Angeles, California 90012

Served Via Email
David K. Eldan
Deputy Attorney General
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Gregory A Bray
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Dated: February 14, 2020

/s/ Gary E. Klausner
GARY E. KLAUSNER