GARY E. KLAUSNER (SBN 69077)
gek@lnbyb.com
JEFFREY S. KWONG (SBN 288239)
jsk@lnbyb.com
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, California 90067
Telephone: (310) 229-1234

KEVIN D. RISING (SBN 211663)
kevin.rising@btlaw.com
RACHEL LERMAN (SBN 193080)
rachel.lerman@btlaw.com
JOEL R. MEYER (SBN 247620)
joel.meyer@btlaw.com
BARNES & THORNBURG LLP
2029 Century Park East, Suite 300
Los Angeles, California 90067
Telephone: (310) 284-3880

Attorneys for Defendants:
Strategic Global Management, Inc., Kali P. Chaudhuri, M.D., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN 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

Case No. 2:20-CV-00613-DSF

Related to District Court Appeals: Case Nos.: 2:19-cv-10352-DSF; 2:19-cv-10354-DSF; and 2:19-cv-10356-DSF)

Lead Chapter 11 Bankr. Case 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

1820151200713000000000007

☐ 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.	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
VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT DIALYSIS CENTER, INC., a California nonprofit public benefit corporation, and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, SETON MEDICAL CENTER, a California nonprofit public benefit corporation, and VERITY HOLDINGS, LLC, a California limited liability company; and Plaintiffs, v. KALI P. CHAUDHURI, M.D., an individual, STRATEGIC GLOBAL MANAGEMENT, INC., a California corporation, KPC HEALTHCARE HOLDINGS, INC., a California corporation, KPC HEALTH PLAN HOLDINGS, INC., a California corporation, KPC HEALTHCARE, INC., a Nevada corporation, KPC GLOBAL MANAGEMENT, LLC, a California Limited Liability Company, and DOES 1 through 500, Defendants.	Adv. Case No. 2:20-ap-01001-ER **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT [Fed. R. Civ. Proc. 12(b)(6)]** Date: August 10, 2020 Time: 1:30 p.m. Judge: Dale S. Fischer Place: Courtroom 7D 350 West 1st Street Los Angeles, CA 90012

Defendants Strategic Global Management, Inc., Kali P. Chaudhuri, M.D., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC, (collectively, "Defendants") hereby submit this Request for Judicial Notice in support of their Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to Fed. Rule Civ. Proc. 12(b)(6).

Pursuant to Federal Rule of Evidence 201[1], Defendants hereby request that this Court take judicial notice of the following documents:

Exhibit "A": *Stipulation Resolving "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The 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]*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3572.

Exhibit "B": *Objection To Order Granting "Debtor's Emergency Motion For The Entry Of An Order: (I) Enforcing The 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"*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3582.

Exhibit "C": *Notice Of Appeal And Statement Of Election*, District Court Case No. 2:19-CV-10352-DSF, Docket No. 1.

Exhibit "D": *Notice Of Debtors' Emergency Motion To Dismiss Appeal*, District Court Case No. 2:19-CV-10352-DSF, Docket No. 2.

[1] The Court may take judicial notice of the records of any court of record of the United States or of any state of the United States. *See* Fed. R. Evid. 201; *see also United States v. Brugnara*, 856 F.3d 1198, 1209 (9th Cir. 2017) (finding that the Court may take judicial notice of its own records).

Exhibit "E": *Order Denying Emergency Motion to Dismiss Appeal (Dkt. No. 2); Order Granting Motion to be Named as Appellee (Dkt. No. 11)*, District Court Case No. 2:19-CV-10352-DSF, Docket No. 19.

Exhibit "F": *Order Vacating Orders of the Bankruptcy Court*, District Court Case No. 2:19-CV-10352-DSF, Docket No. 65.

Exhibit "G": *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 (ECF No. 1704)*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 1879.

Exhibit "H": *Debtors' Memorandum In Support Of Entry Of An Order: (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances; (B) Authorizing The Assumption And Assignment Of Designated Executory Contracts And Unexpired Leases; And (C) Granting Related Relief*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 2115.

Exhibit "I": *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*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 2306.

Exhibit "J": *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*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3043.

Exhibit "K": *Debtors' Reply To California Department Of Health Care Services Objection To Debtors' Sale Of Assets To Strategic Global Management*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3095.

Exhibit "L": *Memorandum Of Decision Authorizing Debtors To Sell Medi-Cal Provider Agreements, Free And Clear Of Interests Asserted By The California Department Of Health Care Services, Pursuant To § 363(F)(5)*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3146.

Exhibit "M": *Notice Of Lodgment Of Order In Bankruptcy Case Re: 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 §§ 363(B) And (F)(5)*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3322.

Exhibit "N": *Creditor California Department Of Health Care Services's Opposition To The Proposed Order* [ECF NO. 3322], Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3330.

Exhibit "O": *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 §§ 363(b) and (f)(5)*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3372.

Exhibit "P": *Notice of Termination, effective December 17, 2019*, Re Bankruptcy Court Case No. 2:18-bk-20151-ER.

Exhibit "Q": *Notice Re Termination Of Asset Purchase Agreement With Strategic Global Management, Inc.*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3899.

Exhibit "R": *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*, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3773.

Exhibit "S": *Transcript Of Proceedings: Status Conference Re: [2995]*

Motion For Approval Of Chapter 11 Disclosure Statement Notice Of Hearing And Motion Of The Debtors For An Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting Procedures; (III) Notice And Objection Procedures For Confirmation Of Debtors' Plan; And (IV) Granting Related Relief, Bankruptcy Court Case No. 2:18-bk-20151-ER, Docket No. 3716.

Exhibit "T": *Appellants California Department Of Health Care Services's Opening Brief*, United States District Court for the Central District of California Case No. 2:19-cv-08762-JVS, Docket No. 7.

Dated: July 10, 2020

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

By:/s/Gary E. Klausner
Gary E. Klausner

Dated: July 10, 2020

BARNES & THORNBURG LLP

By:/s/ Joel R. Meyer
Joel R. Meyer

Attorneys for Defendant and Appellant Strategic Global Management, Inc., and Defendants Kali P. Chaudhuri, M.D., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Joel R. Meyer, attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: July 10, 2020

/s/ Joel R. Meyer
Joel R. Meyer

Exhibit A

Exhibit A

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar. No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

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
☐ 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. 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

STIPULATION RESOLVING "DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE 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]

Hearing Date and Time:
Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Place: 255 E. Temple St., Courtroom 1568
Los Angeles, CA 90012

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

This stipulation is entered into by and between Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors") and the California Attorney General (the "Attorney General" and, together with the Debtors, the "Parties"), with respect to the following:

A. On September 30, 2019, the Debtors filed the *Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the 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 the Conditions on That Sale; and (IV) Granting Related Relief* [Docket No. 3188] (the "Motion").[1]

B. On October 9, 2019, the Attorney General filed the *Opposition of California Attorney General to "Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the 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 No. 3333] (the "Attorney General Opposition").

C. On October 10, 2019, Strategic Global Management, Inc. ("SGM") filed the *Statement of Strategic Global Management, Inc. in Support of "Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the 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 . . . ."* [Docket No. 3356] (the "SGM Statement").

D. On October 14, 2019, the Debtors filed the *Debtors' Reply to California Attorney General's Opposition to Debtors' Motion for the Entry of an Order Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.* [Docket No. 3382] (the "Reply").

E. On October 15, 2019, at 10:00 a.m. (Pacific Time), the Court held a hearing on the Motion (the "Hearing"). Appearances were as set forth on the record of the Hearing.

F. On October 23, 2019, the Court filed its *Memorandum of Decision Granting*

[1] Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Debtors' Emergency Motion to Enforce Sale Order [Doc. No. 3188] [Docket No. 3446] (the "Memorandum Decision").

STIPULATION

NOW, THEREFORE, all of the Parties to this Stipulation hereby conditionally stipulate and agree as follows:

1. The Motion shall be granted by entry of the proposed order, attached hereto as Exhibit "A", entitled *Order Granting "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The 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]* (the "Order").

2. The Attorney General does not agree or concede that the Additional Conditions (as defined in the Order) are an "interest in property" for purposes of 11 U.S.C. § 363(f), but acknowledges that the Court so held in the Memorandum Decision (which is to be vacated and withdrawn pursuant to the Order) and that, solely and exclusively for purposes of the APA (as defined in the Order) and the Motion, the Order so states.

3. This Stipulation shall be binding and effective upon, but only upon, entry of the Order in the proposed form attached hereto.

Dated: November 8, 2019

DENTONS US LLP

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

Counsel to the Debtors and Debtors in Possession

Dated: November 8, 2019

CALIFORNIA DEPARTMENT OF JUSTICE

By: _____
David K. Eldan

Counsel to Xavier Becerra, Attorney General of the State of California

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

Debtors' Emergency Motion to Enforce Sale Order [Doc. No. 3188] [Docket No. 3446] (the "Memorandum Decision").

STIPULATION

NOW, THEREFORE, all of the Parties to this Stipulation hereby conditionally stipulate and agree as follows:

1. The Motion shall be granted by entry of the proposed order, attached hereto as Exhibit "A", entitled *Order Granting "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The 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]* (the "Order").

2. The Attorney General does not agree or concede that the Additional Conditions (as defined in the Order) are an "interest in property" for purposes of 11 U.S.C. § 363(f), but acknowledges that the Court so held in the Memorandum Decision (which is to be vacated and withdrawn pursuant to the Order) and that, solely and exclusively for purposes of the APA (as defined in the Order) and the Motion, the Order so states.

3. This Stipulation shall be binding and effective upon, but only upon, entry of the Order in the proposed form attached hereto.

Dated: November 8, 2019

DENTONS US LLP

By: _____
Tania M. Moyron
Counsel to the Debtors and Debtors in Possession

Dated: November 8, 2019

CALIFORNIA DEPARTMENT OF JUSTICE

By: _____
David K. Eldan
Counsel to Xavier Becerra, Attorney General of the State of California

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

Exhibit A

Proposed Order

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

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.*, Debtor and Debtor 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 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 Dialysis, LLC Debtors and Debtors In Possession.	**ORDER GRANTING "DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE 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]** Hearing Date and Time: Date: October 15, 2019 Time: 10:00 a.m. (Pacific Time) Location: Courtroom 1568 255 E. Temple Street Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

The Court, having considered the motion [Docket No. 3188] (the "Motion")[1] filed by Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), the response [Docket No. 3333] of the California Attorney General (the "Attorney General"), the statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its affiliates, "SGM"), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No. ___] by and among the Debtors and the Attorney General, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED.

2. The Court's memorandum decision [Docket No. 3446] is hereby vacated and withdrawn.

3. Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the "APA")) are an "interest in property" for purposes of 11 U.S.C. § 363(f), and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).

4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order. Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

/ / /

/ / /

/ / /

/ / /

[1] Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

###

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit B

Exhibit B

GARY E. KLAUSNER (SBN 69077)
gek@lnbyb.com
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, CA 90067
Telephone: (310) 229-1234
Facsimile: (310) 229-1244

Attorneys for Strategic Global Management, Inc.

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.: 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

OBJECTION TO ORDER GRANTING "DEBTOR'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE 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)

Strategic Global Management, Inc. ("SGM") submits the following Objection to the "Order Granting Debtor's Emergency Motion For The Entry Of An Order: (I) Enforcing The 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. 3574] submitted by Verity Health System of California, Inc. and related and affiliated Debtors.

I.

INTRODUCTION

An enormous amount of time and expense has been incurred in the efforts of the Debtors, SGM, and other parties in interest, to reach an agreement for SGM's purchase of 4 hospitals for a price of over $600 Million, which will pave the way for confirmation of the Debtors' Plan of Reorganization, and the continued operation of the hospitals, employment of thousands of people, and support of the communities they serve. Fundamental to that process has been the need to resolve the issue of whether and to what extent SGM would be obligated to perform or abide by conditions which the California Attorney General ("AG") might attempt to impose as part of his approval process. In recognition of the history in other cases of the AG's imposition of conditions that have had the effect of causing transaction to fail and hospitals to close, SGM bargained for protection such that it would not have to close this transaction if the conditions imposed by the AG were materially different ("Additional Conditions") from that which SGM had agreed to accept. The provisions of the APA addressing this subject matter are contained in section 8.6.

The AG issued his Decision on September 25, 2019, in which the AG imposed Additional Conditions for his approval of the sale to SGM. The Debtors, with SGM's support, filed its "Emergency Motion For The Entry Of An Order: (I) Enforcing The 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] requesting a determination, among other things, that the sale to SGM was free and clear of such Additional Conditions. Following the conclusion of the hearing on the Emergency Motion, this court filed its Memorandum Decision on October 23, 2019 [Doc. 3446] in which it granted the Emergency Motion and, recognizing the importance (if not ground breaking nature) of its ruling, the Court certified its ruling for a direct appeal to the U.S. Court of Appeals for the Ninth Circuit.

The AG has agreed to waive its right to appeal in exchange for the Court's vacation of its Memorandum Decision and entry of a form of order to which it consents. That proposed order [Doc. 3574] attached as Exhibit A hereto (herein, the "AG Order"), is not acceptable to SGM. While SGM remains fully committed to the transaction, fundamental to SGM's rights as a purchaser is the protection to which it is entitled under APA section 8.6 in the form of a clearly and unambiguously written order which forecloses, to the extent possible, any disputes or controversies as to SGM's protection from such Additional Conditions, its right not to comply with, perform or adhere to any of the Additional Conditions, and SGM's ability to come to this court if there are future disputes or controversies over the interpretation or enforcement of such order. Rather than accomplish that end, the AG Order is muddled, obtuse, grammatically ambiguous, and, if entered, will not provide SGM the clear and unequivocal protection to which it is entitled and which SGM believes the court intended it to have. Fortunately, these deficiencies can be corrected, with no prejudice to the AG or to the Debtors.

Under the unique circumstances of this case including: (1) the removal from the record of the Court's Memorandum Decision, which thoroughly and comprehensively set forth the bases for the Court's ruling in granting the Motion, and (2) the profoundly important consequence of the Court's order on SGM's future relationship with the AG for many years, in a transaction in which SGM will be paying over $600 Million, SGM is entitled to have a clearly-written, unequivocal and unambiguous order that addresses the following subject matters which were not fully and clearly provided for in the AG Order: (1) a definition of "Additional Conditions," (2) a clear statement as to what the "free and clear" terminology means as to the "Additional Conditions," and (3) a clear and unambiguous statement regarding this Court's jurisdiction to

resolve disputes or controversies over the Order.

All of SGM's concerns over the AG Order can be fixed very simply and effectively by the alternative order forth on Exhibit B hereto (the "SGM Order"). The use of the SGM Order, in lieu of the AG Order, while providing necessary protection to SGM, will have no prejudicial impact whatsoever on the AG or the Debtors. While SGM recognizes that one of the AG's goals, in waiving its appeal and having the Court vacate its Memorandum Decision, is to limit, as much as possible, a public record regarding this Court's significant decision concerning the unenforceability of the Additional Conditions, the AG's goal of limiting the "collateral damage" from this Court's ruling must give way to SGM's entitlement to a clearly stated, unambiguous order which will avoid, or limit to the maximum extent, confusion and controversy over exactly what this Court has decided.

Unfortunately, the AG's effort to avoid the precedential effect of this Court's ruling has created an unnecessarily ambiguous order which may actually result in litigation between the AG and SGM. The AG's verbatim extraction of specific language from § 8.6, while superficially appealing, is grammatically unartful. Whether by design to obscure the outcome of the Court's ruling or simply poor draftsmanship, the end result is an order that does not do justice to, or fairly reflects, this Court's ruling and leaves SGM open to litigation.

II.

THE CHANGES NECESSARY TO PROTECT THE INTEREST OF SGM, CAN BE MADE WITHOUT ANY PREJUDICE TO THE AG

SGM's proposed alternative order, at Paragraph 2, which is the paragraph that addresses the "free and clear" provision of the order, states as follows:

> The Debtors' transfer to SGM of the Debtors' assets (the "SGM Sale") pursuant to that certain Asset Purchase Agreement [Docket No. 2305-1] (the "SGM APA") is free and clear of, and shall not be subject to or conditioned upon SGM's performance of, compliance with, or adherence to, any and all Additional Conditions (as defined in the SGM APA and in the Motion), pursuant to Bankruptcy Code § 363(b), (f1), and (f5) and otherwise is provided in the Sale Order."

The foregoing language is entirely consistent with the Debtor's Motion, this Court's Memorandum Decision and, most importantly, expressly states what "free and clear" means, i.e. that SGM is not required to perform, comply with or adhere to the Additional Conditions. Because the concept of a "free and clear" sale as applied to regulatory conditions is, to say the least, unusual, SGM believes that it is critical that the Order contain language, which clarifies that a sale free and clear of conditions means that SGM will not have to comply with them. Otherwise, there could be some doubt, and later a dispute, about exactly what the term "free and clear" means as applied to regulatory conditions. The whole purpose of the SGM's negotiation of its rights under § 8.6, and of the Debtor's Emergency Motion to satisfy its obligation under § 8.6, was to establish that SGM would not have to comply with the AG Conditions. There is no legitimate reason why the AG should refuse to have such language included in the Order – unless the AG desires to leave the Order ambiguous enough either to be able to "spin it" or to create a basis for controversy.

The problem with the AG's language, especially in comparison to that proposed by SGM, are several fold. First, the prefatory words "Solely and exclusively for the purposes of the APA" are unnecessary, not requested by the Debtor or SGM in the Motion, and are ambiguous. The transfer of the Debtor's assets free and clear of the Additional Conditions needs to be clearly and unambiguously stated. What does "Solely and exclusively for purpose of the APA" mean? If the AG wants language to the effect that this Order does not apply to some other transaction over which the AG has approval authority, then the Order can provide such language.

The AG Order contains the additional verbiage addressing the critical issue of the sale being free and clear of the Additional Conditions in an awkward and imprecise manner:

> Solely and exclusively for purposes of the APA . . . the Additional Conditions . . . are an "interest in property" for purposes of 11 U.S.C. § 363(f) and the assets (as defined in the APA) *can be* sold free and clear of the Additional Conditions . . . .(Emphasis added.)

The use of the words "can be sold" does not expressively state that they "are being transferred" free and clear. While the AG has adopted verbiage from § 8.6 of the APA, word for

word, those words do not translate clearly into a court order. There is no particular reason why the Order should use the phrase "can be sold" as opposed to "are being transferred" which is consistent with the Sale Order and is exactly what this Court decided when it granted the Emergency Motion.

Finally, this Court made no ruling as to the AG's enforcement rights (and no such ruling was requested) and this Court should retain exclusive jurisdiction to resolve any disputes or controversies concerning its Order. The AG Order, after acknowledging the Bankruptcy Court's exclusive jurisdiction, goes on to say:

> "Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth in Schedule 8.6 to the SGM APA."

First, there is no basis, either in the Emergency Motion, the AG's Opposition or the Memorandum Decision, for this Court to be ruling on the AG's enforcement right, one way or the other, except with respect to the Additional Conditions. Second, the words "Notwithstanding the preceding sentence" obviously are meant to supersede the prior sentence and, since the prior sentence provided for the Bankruptcy Court's "exclusive jurisdiction" over disputes pertaining to the Order, the AG Order would effectively trump that provision which or, at least create a "forum war" over future disputes. In light of the fact that a dispute could involve whether the AG is improperly attempting to enforce an "Additional Condition", there should be no question that any such dispute should be heard in this Court, since it is this Court that has created the barrier against such enforcement.

/ / /

/ / /

/ / /

/ / /

/ / /

Based on the foregoing, SGM respectfully requests that the Court enter the SGM Order.[1]

Dated: November 11, 2019

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

By: */s/ Gary E. Klausner*
Gary E. Klausner
Counsel for Strategic Global Management, Inc.

[1] SGM reserves all of its rights under the APA including, without limitation, as provided for in section 8.6

EXHIBIT “A”

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

Samuel R. Maizel (SBN 189301)
samuel.maizel@dentons.com
Tania M. Moyron (SBN 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017
Telephone: (213) 623-9300
Facsimile: (213) 623-9924

☐ Individual *appearing without an attorney*
☒ *Attorney for:* Debtors and Debtors In Possession

FOR COURT USE ONLY

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 Dialysis, LLC
Liquidation Corporation, a California corporation,

Debtor(s)

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

NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE RE: (*title of motion*[1]):
Enforcement Motion [Docket No. 3188]

PLEASE TAKE NOTE that the order titled Order Granting "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The 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]
was lodged on (*date*) 11/08/19 and is attached. This order relates to the motion which is docket number 3188.

[1] Please abbreviate if title cannot fit into text field.

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

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.*, Debtor and Debtor 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 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 Dialysis, LLC Debtors and Debtors In Possession.	**ORDER GRANTING "DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE 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]** Hearing Date and Time: Date: October 15, 2019 Time: 10:00 a.m. (Pacific Time) Location: Courtroom 1568 255 E. Temple Street Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

The Court, having considered the motion [Docket No. 3188] (the "Motion")[1] filed by Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), the response [Docket No. 3333] of the California Attorney General (the "Attorney General"), the statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its affiliates, "SGM"), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No. 3572] by and among the Debtors and the Attorney General, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED.

2. The Court's memorandum decision [Docket No. 3446] is hereby vacated and withdrawn.

3. Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the "APA")) are an "interest in property" for purposes of 11 U.S.C. § 363(f), and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).

4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order. Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

/ / /

/ / /

/ / /

/ / /

[1] Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

###

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

EXHIBIT “B”

GARY E. KLAUSNER (SBN 69077)
gek@lnbyb.com
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, CA 90067
Telephone: (310) 229-1234
Facsimile: (310) 229-1244

Attorneys for Strategic Global Management, Inc.

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

In re

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

Debtor and Debtor 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 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
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

ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE 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)

Hearing:
Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

The Court, having considered the motion [Docket No. 3188] (the "Motion")[1] filed by Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), the response [Docket No. 3333] of the California Attorney General (the "Attorney General"), the statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its affiliates, "SGM"), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No. 3572] by and among the Debtors and the Attorney General, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED.

2. The Debtors' transfer to SGM of the Debtors' assets (the "SGM Sale") pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the "SGM APA") is free and clear of, and shall not be subject to or conditioned upon SGM's performance of, compliance with, or adherence to, any and all Additional Conditions (as defined in the SGM APA and in the Motion), pursuant to Bankruptcy Code §§ 363(b), (f)(1), (f)(4), and (f)(5) and otherwise as provided in the Sale Order.

3. This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order.

4. The Court's memorandum decision [Docket No. 3446] is hereby vacated and withdrawn.

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

###

[1] Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **OBJECTION TO ORDER GRANTING "DEBTOR'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE ORDER AUTHORIZING THE SALE TO STRATEGIC GLOBAL MANAGEMENT, INC.; (II) FINDING THAT THE SALE IS FREE AND CLEAR OF CONDITION 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)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 11, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Alexandra Achamallah aachamallah@milbank.com, rliubicic@milbank.com
- Melinda Alonzo ml7829@att.com
- Robert N Amkraut ramkraut@foxrothschild.com
- Kyra E Andrassy kandrassy@swelawfirm.com, lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- Simon Aron saron@wrslawyers.com
- Lauren T Attard lattard@bakerlaw.com, agrosso@bakerlaw.com
- Allison R Axenrod allison@claimsrecoveryllc.com
- Keith Patrick Banner kbanner@greenbergglusker.com, sharper@greenbergglusker.com;calendar@greenbergglusker.com
- Cristina E Bautista cristina.bautista@kattenlaw.com, ecf.lax.docket@kattenlaw.com
- James Cornell Behrens jbehrens@milbank.com, gbray@milbank.com;mshinderman@milbank.com;dodonnell@milbank.com;jbrewster@milbank.com;JWeber@milbank.com
- Ron Bender rb@lnbyb.com
- Bruce Bennett bbennett@jonesday.com
- Peter J Benvenutti pbenvenutti@kellerbenvenutti.com, pjbenven74@yahoo.com
- Leslie A Berkoff lberkoff@moritthock.com, hmay@moritthock.com
- Steven M Berman sberman@slk-law.com
- Stephen F Biegenzahn efile@sfblaw.com
- Scott E Blakeley seb@blakeleyllp.com, ecf@blakeleyllp.com
- Karl E Block kblock@loeb.com, jvazquez@loeb.com;ladocket@loeb.com;kblock@ecf.courtdrive.com
- Dustin P Branch branchd@ballardspahr.com, carolod@ballardspahr.com;hubenb@ballardspahr.com
- Michael D Breslauer mbreslauer@swsslaw.com, wyones@swsslaw.com;mbreslauer@ecf.courtdrive.com;wyones@ecf.courtdrive.com
- Chane Buck cbuck@jonesday.com
- Lori A Butler butler.lori@pbgc.gov, efile@pbgc.gov
- Howard Camhi hcamhi@ecjlaw.com, tcastelli@ecjlaw.com;amatsuoka@ecjlaw.com
- Barry A Chatz barry.chatz@saul.com, jurate.medziak@saul.com
- Shirley Cho scho@pszjlaw.com
- Shawn M Christianson cmcintire@buchalter.com, schristianson@buchalter.com
- Louis J. Cisz lcisz@nixonpeabody.com, jzic@nixonpeabody.com
- Leslie A Cohen leslie@lesliecohenlaw.com, jaime@lesliecohenlaw.com;olivia@lesliecohenlaw.com

- Kevin Collins kevin.collins@btlaw.com, Kathleen.lytle@btlaw.com
- Joseph Corrigan Bankruptcy2@ironmountain.com
- David N Crapo dcrapo@gibbonslaw.com, elrosen@gibbonslaw.com
- Mariam Danielyan md@danielyanlawoffice.com, danielyan.mar@gmail.com
- Brian L Davidoff bdavidoff@greenbergglusker.com, calendar@greenbergglusker.com;jking@greenbergglusker.com
- Aaron Davis aaron.davis@bryancave.com, kat.flaherty@bryancave.com
- Lauren A Deeb lauren.deeb@nelsonmullins.com, maria.domingo@nelsonmullins.com
- Daniel Denny ddenny@milbank.com
- Anthony Dutra adutra@hansonbridgett.com
- Kevin M Eckhardt kevin.eckhardt@gmail.com, keckhardt@hunton.com
- Lei Lei Wang Ekvall lekvall@swelawfirm.com, lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- David K Eldan david.eldan@doj.ca.gov, teresa.depaz@doj.ca.gov
- Andy J Epstein taxcpaesq@gmail.com
- Richard W Esterkin richard.esterkin@morganlewis.com
- Christine R Etheridge christine.etheridge@ikonfin.com
- M Douglas Flahaut flahaut.douglas@arentfox.com
- Michael G Fletcher mfletcher@frandzel.com, sking@frandzel.com
- Joseph D Frank jfrank@fgllp.com, mmatlock@fgllp.com;csmith@fgllp.com;jkleinman@fgllp.com;csucic@fgllp.com
- William B Freeman bill.freeman@kattenlaw.com, nicole.jones@kattenlaw.com,ecf.lax.docket@kattenlaw.com
- Eric J Fromme efromme@tocounsel.com, lchapman@tocounsel.com;sschuster@tocounsel.com
- Amir Gamliel amir-gamliel-9554@ecf.pacerpro.com, cmallahi@perkinscoie.com;DocketLA@perkinscoie.com
- Jeffrey K Garfinkle jgarfinkle@buchalter.com, docket@buchalter.com;dcyrankowski@buchalter.com
- Thomas M Geher tmg@jmbm.com, bt@jmbm.com;fc3@jmbm.com;tmg@ecf.inforuptcy.com
- Lawrence B Gill lgill@nelsonhardiman.com, rrange@nelsonhardiman.com
- Paul R. Glassman pglassman@sycr.com
- Matthew A Gold courts@argopartners.net
- Eric D Goldberg eric.goldberg@dlapiper.com, eric-goldberg-1103@ecf.pacerpro.com
- Marshall F Goldberg mgoldberg@glassgoldberg.com, jbailey@glassgoldberg.com
- Richard H Golubow rgolubow@wcghlaw.com, pj@wcghlaw.com;jmartinez@wcghlaw.com;Meir@virtualparalegalservices.com
- David M. Guess dmguess@gmail.com
- Anna Gumport agumport@sidley.com
- Melissa T Harris harris.melissa@pbgc.gov, efile@pbgc.gov
- James A Hayes jhayes@zinserhayes.com, jhayes@jamesahayesaplc.com
- Michael S Held mheld@jw.com
- Lawrence J Hilton lhilton@onellp.com, lthomas@onellp.com,info@onellp.com,rgolder@onellp.com,lhyska@onellp.com,nlichtenberger@onellp.com
- Robert M Hirsh Robert.Hirsh@arentfox.com
- Florice Hoffman fhoffman@socal.rr.com, floricehoffman@gmail.com
- Lee F Hoffman leehoffmanjd@gmail.com, lee@fademlaw.com
- Michael Hogue hoguem@gtlaw.com, SFOLitDock@gtlaw.com;navarrom@gtlaw.com
- Matthew B Holbrook mholbrook@sheppardmullin.com, mmanns@sheppardmullin.com
- David I Horowitz david.horowitz@kirkland.com, keith.catuara@kirkland.com;terry.ellis@kirkland.com;elsa.banuelos@kirkland.com;ivon.granados@kirkland.com
- Brian D Huben hubenb@ballardspahr.com, carolod@ballardspahr.com
- Joan Huh joan.huh@cdtfa.ca.gov

- Benjamin Ikuta bikuta@hml.law
- Lawrence A Jacobson laj@cohenandjacobson.com
- John Mark Jennings johnmark.jennings@kutakrock.com, mary.clark@kutakrock.com
- Monique D Jewett-Brewster mjb@hopkinscarley.com, eamaro@hopkinscarley.com
- Crystal Johnson M46380@ATT.COM
- Gregory R Jones gjones@mwe.com, rnhunter@mwe.com
- Jeff D Kahane jkahane@duanemorris.com, dmartinez@duanemorris.com
- Steven J Kahn skahn@pszyjw.com
- Cameo M Kaisler salembier.cameo@pbgc.gov, efile@pbgc.gov
- Ivan L Kallick ikallick@manatt.com, ihernandez@manatt.com
- Ori Katz okatz@sheppardmullin.com, cshulman@sheppardmullin.com;ezisholtz@sheppardmullin.com;lsegura@sheppardmullin.com
- Payam Khodadadi pkhodadadi@mcguirewoods.com, dkiker@mcguirewoods.com
- Christian T Kim ckim@dumas-law.com, ckim@ecf.inforuptcy.com
- Jane Kim jkim@kellerbenvenutti.com
- Monica Y Kim myk@lnbrb.com, myk@ecf.inforuptcy.com
- Gary E Klausner gek@lnbyb.com
- David A Klein david.klein@kirkland.com
- Nicholas A Koffroth nick.koffroth@dentons.com, chris.omeara@dentons.com
- Joseph A Kohanski jkohanski@bushgottlieb.com, kprestegard@bushgottlieb.com
- Darryl S Laddin bkrfilings@agg.com
- Robert S Lampl advocate45@aol.com, rlisarobinsonr@aol.com
- Richard A Lapping richard@lappinglegal.com
- Paul J Laurin plaurin@btlaw.com, slmoore@btlaw.com;jboustani@btlaw.com
- Nathaniel M Leeds nathaniel@mitchelllawsf.com, sam@mitchelllawsf.com
- David E Lemke david.lemke@wallerlaw.com, chris.cronk@wallerlaw.com;Melissa.jones@wallerlaw.com;cathy.thomas@wallerlaw.com
- Lisa Lenherr llenherr@wendel.com, bankruptcy@wendel.com
- Elan S Levey elan.levey@usdoj.gov, louisa.lin@usdoj.gov
- Tracy L Mainguy bankruptcycourtnotices@unioncounsel.net, tmainguy@unioncounsel.net
- Samuel R Maizel samuel.maizel@dentons.com, alicia.aguilar@dentons.com;docket.general.lit.LOS@dentons.com;tania.moyron@dentons.com;kathryn.howard@dentons.com;joan.mack@dentons.com;derry.kalve@dentons.com
- Alvin Mar alvin.mar@usdoj.gov, dare.law@usdoj.gov
- Craig G Margulies Craig@MarguliesFaithlaw.com, Victoria@MarguliesFaithlaw.com;Helen@MarguliesFaithlaw.com;Dana@marguliesfaithlaw.com
- Hutchison B Meltzer hutchison.meltzer@doj.ca.gov, Alicia.Berry@doj.ca.gov
- Christopher Minier becky@ringstadlaw.com, arlene@ringstadlaw.com
- John A Moe john.moe@dentons.com, derry.kalve@dentons.com
- Susan I Montgomery susan@simontgomerylaw.com, assistant@simontgomerylaw.com;simontgomerylawecf.com@gmail.com;montgomerysr71631@notify.bestcase.com
- Monserrat Morales Monsi@MarguliesFaithLaw.com, Victoria@MarguliesFaithLaw.com;Helen@marguliesfaithlaw.com;Dana@marguliesfaithlaw.com
- Kevin H Morse kmorse@clarkhill.com, blambert@clarkhill.com
- Marianne S Mortimer mmartin@jmbm.com
- Tania M Moyron tania.moyron@dentons.com, chris.omeara@dentons.com;nick.koffroth@dentons.com
- Alan I Nahmias anahmias@mbnlawyers.com, jdale@mbnlawyers.com
- Akop J Nalbandyan jnalbandyan@LNtriallawyers.com, cbautista@LNtriallawyers.com
- Jennifer L Nassiri jennifernassiri@quinnemanuel.com
- Charles E Nelson nelsonc@ballardspahr.com, wassweilerw@ballardspahr.com
- Sheila Gropper Nelson shedoesbklaw@aol.com

- Mark A Neubauer mneubauer@carltonfields.com, mlrodriguez@carltonfields.com;smcloughlin@carltonfields.com;schau@carltonfields.com;NDunn@carltonfields.com;ecfla@carltonfields.com
- Fred Neufeld fneufeld@sycr.com, tingman@sycr.com
- Nancy Newman nnewman@hansonbridgett.com, ajackson@hansonbridgett.com;calendarclerk@hansonbridgett.com
- Bryan L Ngo bngo@fortislaw.com, BNgo@bluecapitallaw.com;SPicariello@fortislaw.com;JNguyen@fortislaw.com;JNguyen@bluecapitallaw.com
- Abigail V O'Brient avobrient@mintz.com, docketing@mintz.com;DEHashimoto@mintz.com;nleali@mintz.com;ABLevin@mintz.com;GJLeon@mintz.com
- John R OKeefe jokeefe@metzlewis.com, slohr@metzlewis.com
- Scott H Olson solson@vedderprice.com, jcano@vedderprice.com,jparker@vedderprice.com;scott-olson-2161@ecf.pacerpro.com,ecfsfdocket@vedderprice.com
- Giovanni Orantes go@gobklaw.com, gorantes@orantes-law.com,cmh@gobklaw.com,gobklaw@gmail.com,go@ecf.inforuptcy.com;orantesgr89122@notify.bestcase.com
- Keith C Owens kowens@venable.com, khoang@venable.com
- R Gibson Pagter gibson@ppilawyers.com, ecf@ppilawyers.com;pagterrr51779@notify.bestcase.com
- Paul J Pascuzzi ppascuzzi@ffwplaw.com
- Lisa M Peters lisa.peters@kutakrock.com, marybeth.brukner@kutakrock.com
- Christopher J Petersen cjpetersen@blankrome.com, gsolis@blankrome.com
- Mark D Plevin mplevin@crowell.com, cromo@crowell.com
- Steven G. Polard spolard@ch-law.com, calendar-lao@rmkb.com;melissa.tamura@rmkb.com;anthony.arriola@rmkb.com
- David M Powlen david.powlen@btlaw.com, pgroff@btlaw.com
- Christopher E Prince cprince@lesnickprince.com, jmack@lesnickprince.com;cprince@ecf.courtdrive.com
- Lori L Purkey bareham@purkeyandassociates.com
- William M Rathbone wrathbone@grsm.com, jmydlandevans@grsm.com;sdurazo@grsm.com
- Jason M Reed Jason.Reed@Maslon.com
- Michael B Reynolds mreynolds@swlaw.com, kcollins@swlaw.com
- J. Alexandra Rhim arhim@hrhlaw.com
- Emily P Rich erich@unioncounsel.net, bankruptcycourtnotices@unioncounsel.net
- Robert A Rich , candonian@huntonak.com
- Lesley A Riis lriis@dpmclaw.com
- Debra Riley driley@allenmatkins.com
- Jason E Rios jrios@ffwplaw.com, scisneros@ffwplaw.com
- Julie H Rome-Banks julie@bindermalter.com
- Mary H Rose mrose@buchalter.com
- Megan A Rowe mrowe@dsrhealthlaw.com, lwestoby@dsrhealthlaw.com
- Nathan A Schultz nschultz@goodwinlaw.com
- William Schumacher wschumacher@jonesday.com
- Mark A Serlin ms@swllplaw.com, mor@swllplaw.com
- Seth B Shapiro seth.shapiro@usdoj.gov
- David B Shemano dshemano@shemanolaw.com
- Joseph Shickich jshickich@riddellwilliams.com
- Mark Shinderman mshinderman@milbank.com, dmuhrez@milbank.com;dlbatie@milbank.com
- Rosa A Shirley rshirley@nelsonhardiman.com, ksherry@nelsonhardiman.com;lgill@nelsonhardiman.com;rrange@nelsonhardiman.com
- Kyrsten Skogstad kskogstad@calnurses.org, rcraven@calnurses.org
- Michael St James ecf@stjames-law.com

- Andrew Still astill@swlaw.com, kcollins@swlaw.com
- Jason D Strabo jstrabo@mwe.com, cfuraha@mwe.com
- Sabrina L Streusand Streusand@slollp.com
- Ralph J Swanson ralph.swanson@berliner.com, sabina.hall@berliner.com
- Michael A Sweet msweet@foxrothschild.com, swillis@foxrothschild.com;pbasa@foxrothschild.com
- James Toma james.toma@doj.ca.gov, teresa.depaz@doj.ca.gov
- Gary F Torrell gtorrell@health-law.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Cecelia Valentine cecelia.valentine@nlrb.gov
- Jason Wallach jwallach@ghplaw.com, g33404@notify.cincompass.com
- Kenneth K Wang kenneth.wang@doj.ca.gov, Jennifer.Kim@doj.ca.gov;Stacy.McKellar@doj.ca.gov;yesenia.caro@doj.ca.gov
- Phillip K Wang phillip.wang@rimonlaw.com, david.kline@rimonlaw.com
- Sharon Z. Weiss sharon.weiss@bclplaw.com, raul.morales@bclplaw.com
- Adam G Wentland awentland@tocounsel.com, lkwon@tocounsel.com
- Latonia Williams lwilliams@goodwin.com, bankruptcy@goodwin.com
- Michael S Winsten mike@winsten.com
- Jeffrey C Wisler jwisler@connollygallagher.com, dperkins@connollygallagher.com
- Neal L Wolf nwolf@hansonbridgett.com, calendarclerk@hansonbridgett.com,lchappell@hansonbridgett.com
- Hatty K Yip hatty.yip@usdoj.gov
- Andrew J Ziaja aziaja@leonardcarder.com, sgroff@leonardcarder.com;msimons@leonardcarder.com;lbadar@leonardcarder.com
- Rose Zimmerman rzimmerman@dalycity.org

2. SERVED BY UNITED STATES MAIL: On **November 11, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **November 11, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Served via Attorney Service

The Honorable Ernest M. Robles
United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

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

November 11, 2019	Stephanie Reichert	*/s/ Stephanie Reichert*
Date	*Type Name*	*Signature*

Exhibit C

Exhibit C

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address	FOR COURT USE ONLY
GARY E. KLAUSNER (SBN 69055) LEVENE, NEALE, BENDER, YOO & BRILL L.L.P. 10250 Constellation Boulevard, Suite 1700 Los Angeles, CA 90067 Telephone: (310) 229-1234 Facsimile: (310) 229-1244 EmailL gek@lnbyb.com ☐ *Individual appearing without attorney* ☒ *Attorney for:* Strategic Global Management, Inc.	FILED CLERK, U.S. DISTRICT COURT DEC - 6 2019 CENTRAL DISTRICT OF CALIFORNIA BY: RS DEPUTY 2:19-CV-10352-DSF

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

In re: Verity Health System of California, Inc., et al., Debtor(s).	CASE NO.:2:18-bk-20151-ER ADVERSARY NO.: (*if applicable*) CHAPTER: 11
Plaintiff(s) (*if applicable*). vs. Defendant(s) (*if applicable*).	**NOTICE OF APPEAL AND STATEMENT OF ELECTION**

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): Strategic Global Management, Inc.

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff
☐ Defendant
☒ Other (*describe*):

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor
☐ Creditor
☐ Trustee
☒ Other (*describe*): Party in Interest and proposed buyer in Section 363 sale

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:
   Order Granting "Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the 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..." [Dkt. No. 3611]
2. The date the judgment, order, or decree was entered: 11/14/2019
   See Exhibit A attached hereto.

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (*attach additional pages if necessary*):

1. Party: Verity Health System of California, Inc.

   Attorney:

   Samuel R. Maizel; Tania M. Moyron; and Nicholas A Koffroth
   Dentons US LLP
   601 South Figueroa Street, Suite 2500
   Los Angeles, CA 90017
   Tel: 213-623-9300

2. Party: California Department of Health Care Services

   Attorney:

   Xavier Becerra; Jennifer M. Kim; Kenneth K. Wang
   Attorney General of California
   300 South Spring Street, Suite 1702
   Los Angeles, CA 90013
   Tel: 213-897-2805

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

/s/ Gary E. Klausner Date: 11/29/2019
Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

EXHIBIT A

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and Debtors In Possession

FILED & ENTERED

NOV 14 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.*,

Debtor and Debtor 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 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
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

ORDER GRANTING "DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE 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]

Hearing Date and Time:
Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

The Court, having considered the motion [Docket No. 3188] (the "Motion")[1] filed by Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), the response [Docket No. 3333] of the California Attorney General (the "Attorney General"), the statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its affiliates, "SGM"), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No. 3572] by and among the Debtors and the Attorney General, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED.

2. The Court's memorandum decision [Docket No. 3446] is hereby vacated and withdrawn.

3. Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the "APA")) are an "interest in property" for purposes of 11 U.S.C. § 363(f). The Assets (as defined in the APA) are being sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).

4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order. Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

/ / /

/ / /

/ / /

/ / /

[1] Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

###

Date: November 14, 2019

Ernest M. Robles
United States Bankruptcy Judge

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled: **NOTICE OF APPEAL AND STATEMENT OF ELECTION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 29, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Alexandra Achamallah aachamallah@milbank.com, rliubicic@milbank.com
- Melinda Alonzo ml7829@att.com
- Robert N Amkraut ramkraut@foxrothschild.com
- Kyra E Andrassy kandrassy@swelawfirm.com, lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- Simon Aron saron@wrslawyers.com
- Lauren T Attard lattard@bakerlaw.com, agrosso@bakerlaw.com
- Allison R Axenrod allison@claimsrecoveryllc.com
- Keith Patrick Banner kbanner@greenbergglusker.com, sharper@greenbergglusker.com;calendar@greenbergglusker.com
- Cristina E Bautista cristina.bautista@kattenlaw.com, ecf.lax.docket@kattenlaw.com
- James Cornell Behrens jbehrens@milbank.com, gbray@milbank.com;mshinderman@milbank.com;dodonnell@milbank.com;jbrewster@milbank.com;JWeber@milbank.com
- Ron Bender rb@lnbyb.com
- Bruce Bennett bbennett@jonesday.com
- Peter J Benvenutti pbenvenutti@kellerbenvenutti.com, pjbenven74@yahoo.com
- Leslie A Berkoff lberkoff@moritthock.com, hmay@moritthock.com
- Steven M Berman sberman@slk-law.com
- Stephen F Biegenzahn efile@sfblaw.com
- Karl E Block kblock@loeb.com, jvazquez@loeb.com;ladocket@loeb.com;kblock@ecf.courtdrive.com
- Dustin P Branch branchd@ballardspahr.com, carolod@ballardspahr.com;hubenb@ballardspahr.com
- Michael D Breslauer mbreslauer@swsslaw.com, wyones@swsslaw.com;mbreslauer@ecf.courtdrive.com;wyones@ecf.courtdrive.com
- Chane Buck cbuck@jonesday.com
- Lori A Butler butler.lori@pbgc.gov, efile@pbgc.gov
- Howard Camhi hcamhi@ecjlaw.com, tcastelli@ecjlaw.com;amatsuoka@ecjlaw.com
- Barry A Chatz barry.chatz@saul.com, jurate.medziak@saul.com
- Shirley Cho scho@pszjlaw.com
- Shawn M Christianson cmcintire@buchalter.com, schristianson@buchalter.com
- Louis J. Cisz lcisz@nixonpeabody.com, jzic@nixonpeabody.com
- Leslie A Cohen leslie@lesliecohenlaw.com, jaime@lesliecohenlaw.com;olivia@lesliecohenlaw.com
- Marcus Colabianchi mcolabianchi@duanemorris.com
- Kevin Collins kevin.collins@btlaw.com, Kathleen.lytle@btlaw.com
- Joseph Corrigan Bankruptcy2@ironmountain.com
- David N Crapo dcrapo@gibbonslaw.com, elrosen@gibbonslaw.com
- Mariam Danielyan md@danielyanlawoffice.com, danielyan.mar@gmail.com

- Brian L Davidoff bdavidoff@greenbergglusker.com, calendar@greenbergglusker.com;jking@greenbergglusker.com
- Aaron Davis aaron.davis@bryancave.com, kat.flaherty@bryancave.com
- Lauren A Deeb lauren.deeb@nelsonmullins.com, maria.domingo@nelsonmullins.com
- Daniel Denny ddenny@milbank.com
- Anthony Dutra adutra@hansonbridgett.com
- Kevin M Eckhardt kevin.eckhardt@gmail.com, keckhardt@hunton.com
- Lei Lei Wang Ekvall lekvall@swelawfirm.com, lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- David K Eldan david.eldan@doj.ca.gov, teresa.depaz@doj.ca.gov
- Andy J Epstein taxcpaesq@gmail.com
- Richard W Esterkin richard.esterkin@morganlewis.com
- Christine R Etheridge christine.etheridge@ikonfin.com
- M Douglas Flahaut flahaut.douglas@arentfox.com
- Michael G Fletcher mfletcher@frandzel.com, sking@frandzel.com
- Joseph D Frank jfrank@fgllp.com, mmatlock@fgllp.com;csmith@fgllp.com;jkleinman@fgllp.com;csucic@fgllp.com
- William B Freeman bill.freeman@kattenlaw.com, nicole.jones@kattenlaw.com,ecf.lax.docket@kattenlaw.com
- Eric J Fromme efromme@tocounsel.com, lchapman@tocounsel.com;sschuster@tocounsel.com
- Amir Gamliel amir-gamliel-9554@ecf.pacerpro.com, cmallahi@perkinscoie.com;DocketLA@perkinscoie.com
- Jeffrey K Garfinkle jgarfinkle@buchalter.com, docket@buchalter.com;dcyrankowski@buchalter.com
- Thomas M Geher tmg@jmbm.com, bt@jmbm.com;fc3@jmbm.com;tmg@ecf.inforuptcy.com
- Lawrence B Gill lgill@nelsonhardiman.com, rrange@nelsonhardiman.com;mmarkwell@nelsonhardiman.com
- Paul R. Glassman pglassman@sycr.com
- Matthew A Gold courts@argopartners.net
- Eric D Goldberg eric.goldberg@dlapiper.com, eric-goldberg-1103@ecf.pacerpro.com
- Marshall F Goldberg mgoldberg@glassgoldberg.com, jbailey@glassgoldberg.com
- Richard H Golubow rgolubow@wcghlaw.com, pj@wcghlaw.com;jmartinez@wcghlaw.com;Meir@virtualparalegalservices.com
- David M. Guess guessd@gtlaw.com
- Anna Gumport agumport@sidley.com
- Melissa T Harris harris.melissa@pbgc.gov, efile@pbgc.gov
- James A Hayes jhayes@zinserhayes.com, jhayes@jamesahayesaplc.com
- Michael S Held mheld@jw.com
- Lawrence J Hilton lhilton@onellp.com, lthomas@onellp.com,info@onellp.com,rgolder@onellp.com,lhyska@onellp.com,nlichtenberger@onellp.com
- Robert M Hirsh Robert.Hirsh@arentfox.com
- Florice Hoffman fhoffman@socal.rr.com, floricehoffman@gmail.com
- Lee F Hoffman leehoffmanjd@gmail.com, lee@fademlaw.com
- Michael Hogue hoguem@gtlaw.com, SFOLitDock@gtlaw.com;navarrom@gtlaw.com
- Matthew B Holbrook mholbrook@sheppardmullin.com, mmanns@sheppardmullin.com
- David I Horowitz david.horowitz@kirkland.com, keith.catuara@kirkland.com;terry.ellis@kirkland.com;elsa.banuelos@kirkland.com;ivon.granados@kirkland.com
- Brian D Huben hubenb@ballardspahr.com, carolod@ballardspahr.com
- Joan Huh joan.huh@cdtfa.ca.gov
- Benjamin Ikuta bikuta@hml.law
- Lawrence A Jacobson laj@cohenandjacobson.com
- John Mark Jennings johnmark.jennings@kutakrock.com, mary.clark@kutakrock.com
- Monique D Jewett-Brewster mjb@hopkinscarley.com, eamaro@hopkinscarley.com

- Crystal Johnson M46380@ATT.COM
- Gregory R Jones gjones@mwe.com, rnhunter@mwe.com
- Jeff D Kahane jkahane@duanemorris.com, dmartinez@duanemorris.com
- Steven J Kahn skahn@pszyjw.com
- Cameo M Kaisler salembier.cameo@pbgc.gov, efile@pbgc.gov
- Ivan L Kallick ikallick@manatt.com, ihernandez@manatt.com
- Ori Katz okatz@sheppardmullin.com, cshulman@sheppardmullin.com;ezisholtz@sheppardmullin.com;lsegura@sheppardmullin.com
- Payam Khodadadi pkhodadadi@mcguirewoods.com, dkiker@mcguirewoods.com
- Christian T Kim ckim@dumas-law.com, ckim@ecf.inforuptcy.com
- Jane Kim jkim@kellerbenvenutti.com
- Monica Y Kim myk@lnbrb.com, myk@ecf.inforuptcy.com
- Gary E Klausner gek@lnbyb.com
- David A Klein david.klein@kirkland.com
- Nicholas A Koffroth nick.koffroth@dentons.com, chris.omeara@dentons.com
- Joseph A Kohanski jkohanski@bushgottlieb.com, kprestegard@bushgottlieb.com
- Darryl S Laddin bkrfilings@agg.com
- Robert S Lampl advocate45@aol.com, rlisarobinsonr@aol.com
- Richard A Lapping richard@lappinglegal.com
- Paul J Laurin plaurin@btlaw.com, slmoore@btlaw.com;jboustani@btlaw.com
- Nathaniel M Leeds nathaniel@mitchelllawsf.com, sam@mitchelllawsf.com
- David E Lemke david.lemke@wallerlaw.com, chris.cronk@wallerlaw.com;Melissa.jones@wallerlaw.com;cathy.thomas@wallerlaw.com
- Lisa Lenherr llenherr@wendel.com, bankruptcy@wendel.com
- Elan S Levey elan.levey@usdoj.gov, louisa.lin@usdoj.gov
- Tracy L Mainguy bankruptcycourtnotices@unioncounsel.net, tmainguy@unioncounsel.net
- Samuel R Maizel samuel.maizel@dentons.com, alicia.aguilar@dentons.com;docket.general.lit.LOS@dentons.com;tania.moyron@dentons.com;kathryn.howard@dentons.com;joan.mack@dentons.com;derry.kalve@dentons.com
- Alvin Mar alvin.mar@usdoj.gov, dare.law@usdoj.gov
- Craig G Margulies Craig@MarguliesFaithlaw.com, Victoria@MarguliesFaithlaw.com;Helen@MarguliesFaithlaw.com;Dana@marguliesfaithlaw.com
- Hutchison B Meltzer hutchison.meltzer@doj.ca.gov, Alicia.Berry@doj.ca.gov
- Christopher Minier becky@ringstadlaw.com, arlene@ringstadlaw.com
- John A Moe john.moe@dentons.com, derry.kalve@dentons.com
- Susan I Montgomery susan@simontgomerylaw.com, assistant@simontgomerylaw.com;simontgomerylawecf.com@gmail.com;montgomerysr71631@notify.bestcase.com
- Monserrat Morales Monsi@MarguliesFaithLaw.com, Victoria@MarguliesFaithLaw.com;Helen@marguliesfaithlaw.com;Dana@marguliesfaithlaw.com
- Kevin H Morse kmorse@clarkhill.com, blambert@clarkhill.com
- Marianne S Mortimer mmartin@jmbm.com
- Tania M Moyron tania.moyron@dentons.com, chris.omeara@dentons.com;nick.koffroth@dentons.com
- Alan I Nahmias anahmias@mbnlawyers.com, jdale@mbnlawyers.com
- Akop J Nalbandyan jnalbandyan@LNtriallawyers.com, cbautista@LNtriallawyers.com
- Jennifer L Nassiri jennifernassiri@quinnemanuel.com
- Charles E Nelson nelsonc@ballardspahr.com, wassweilerw@ballardspahr.com
- Sheila Gropper Nelson shedoesbklaw@aol.com
- Mark A Neubauer mneubauer@carltonfields.com, mlrodriguez@carltonfields.com;smcloughlin@carltonfields.com;schau@carltonfields.com;NDunn@carltonfields.com;ecfla@carltonfields.com
- Fred Neufeld fneufeld@sycr.com, tingman@sycr.com
- Nancy Newman nnewman@hansonbridgett.com, ajackson@hansonbridgett.com;calendarclerk@hansonbridgett.com

- Bryan L Ngo bngo@fortislaw.com, BNgo@bluecapitallaw.com;SPicariello@fortislaw.com;JNguyen@fortislaw.com;JNguyen@bluecapitallaw.com
- Abigail V O'Brient avobrient@mintz.com, docketing@mintz.com;DEHashimoto@mintz.com;nleali@mintz.com;ABLevin@mintz.com;GJLeon@mintz.com
- John R OKeefe jokeefe@metzlewis.com, slohr@metzlewis.com
- Scott H Olson solson@vedderprice.com, jcano@vedderprice.com,jparker@vedderprice.com;scott-olson-2161@ecf.pacerpro.com,ecfsfdocket@vedderprice.com
- Giovanni Orantes go@gobklaw.com, gorantes@orantes-law.com,cmh@gobklaw.com,gobklaw@gmail.com,go@ecf.inforuptcy.com;orantesgr89122@notify.bestcase.com
- Keith C Owens kowens@venable.com, khoang@venable.com
- R Gibson Pagter gibson@ppilawyers.com, ecf@ppilawyers.com;pagterrr51779@notify.bestcase.com
- Paul J Pascuzzi ppascuzzi@ffwplaw.com
- Lisa M Peters lisa.peters@kutakrock.com, marybeth.brukner@kutakrock.com
- Christopher J Petersen cjpetersen@blankrome.com, gsolis@blankrome.com
- Mark D Plevin mplevin@crowell.com, cromo@crowell.com
- Steven G. Polard spolard@ch-law.com, calendar-lao@rmkb.com;melissa.tamura@rmkb.com;anthony.arriola@rmkb.com
- David M Powlen david.powlen@btlaw.com, pgroff@btlaw.com
- Christopher E Prince cprince@lesnickprince.com, jmack@lesnickprince.com;cprince@ecf.courtdrive.com
- Lori L Purkey bareham@purkeyandassociates.com
- William M Rathbone wrathbone@grsm.com, jmydlandevans@grsm.com;sdurazo@grsm.com
- Jason M Reed Jason.Reed@Maslon.com
- Michael B Reynolds mreynolds@swlaw.com, kcollins@swlaw.com
- J. Alexandra Rhim arhim@hrhlaw.com
- Emily P Rich erich@unioncounsel.net, bankruptcycourtnotices@unioncounsel.net
- Robert A Rich , candonian@huntonak.com
- Lesley A Riis lriis@dpmclaw.com
- Debra Riley driley@allenmatkins.com
- Jason E Rios jrios@ffwplaw.com, scisneros@ffwplaw.com
- Julie H Rome-Banks julie@bindermalter.com
- Mary H Rose mrose@buchalter.com
- Megan A Rowe mrowe@dsrhealthlaw.com, lwestoby@dsrhealthlaw.com
- Nathan A Schultz nschultz@goodwinlaw.com
- Mark A Serlin ms@swllplaw.com, mor@swllplaw.com
- Seth B Shapiro seth.shapiro@usdoj.gov
- David B Shemano dshemano@shemanolaw.com
- Joseph Shickich jshickich@riddellwilliams.com
- Mark Shinderman mshinderman@milbank.com, dmuhrez@milbank.com;dlbatie@milbank.com
- Rosa A Shirley rshirley@nelsonhardiman.com, ksherry@nelsonhardiman.com;lgill@nelsonhardiman.com;rrange@nelsonhardiman.com
- Kyrsten Skogstad kskogstad@calnurses.org, rcraven@calnurses.org
- Michael St James ecf@stjames-law.com
- Andrew Still astill@swlaw.com, kcollins@swlaw.com
- Jason D Strabo jstrabo@mwe.com, cfuraha@mwe.com
- Sabrina L Streusand Streusand@slollp.com
- Ralph J Swanson ralph.swanson@berliner.com, sabina.hall@berliner.com
- Michael A Sweet msweet@foxrothschild.com, swillis@foxrothschild.com;pbasa@foxrothschild.com
- James Toma james.toma@doj.ca.gov, teresa.depaz@doj.ca.gov

- Gary F Torrell gtorrell@health-law.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Cecelia Valentine cecelia.valentine@nlrb.gov
- Jason Wallach jwallach@ghplaw.com, g33404@notify.cincompass.com
- Kenneth K Wang kenneth.wang@doj.ca.gov, Jennifer.Kim@doj.ca.gov;Stacy.McKellar@doj.ca.gov;yesenia.caro@doj.ca.gov
- Phillip K Wang phillip.wang@rimonlaw.com, david.kline@rimonlaw.com
- Sharon Z. Weiss sharon.weiss@bclplaw.com, raul.morales@bclplaw.com
- Adam G Wentland awentland@tocounsel.com, lkwon@tocounsel.com
- Latonia Williams lwilliams@goodwin.com, bankruptcy@goodwin.com
- Michael S Winsten mike@winsten.com
- Jeffrey C Wisler jwisler@connollygallagher.com, dperkins@connollygallagher.com
- Neal L Wolf nwolf@hansonbridgett.com, calendarclerk@hansonbridgett.com,lchappell@hansonbridgett.com
- Hatty K Yip hatty.yip@usdoj.gov
- Andrew J Ziaja aziaja@leonardcarder.com, sgroff@leonardcarder.com;msimons@leonardcarder.com;lbadar@leonardcarder.com
- Rose Zimmerman rzimmerman@dalycity.org

2. SERVED BY UNITED STATES MAIL: On December 2, 2019 served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

The Honorable Ernest M. Robles
United States Bankruptcy Court
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **November 29, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

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

November 29, 2019	Jeffrey Kwong	*/s/ Jeffrey Kwong*
Date	*Type Name*	*Signature*

Exhibit D

Exhibit D

2:19-cv-10352-DSF

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession	On Appeal from the United States Bankruptcy Court for the Central District of California
STRATEGIC GLOBAL MANAGEMENT, INC.[1] Appellant	Bankruptcy Court Lead Case No.: 2:18-bk-20151-ER Chapter 11
v.	Date: [TBD] Time: [TBD] Courtroom: 7D Location: 350 W. First Street Los Angeles, CA 90012
STATE OF CALIFORNIA; VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.* Appellees	

NOTICE OF DEBTORS' EMERGENCY MOTION TO DISMISS APPEAL

[1] 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 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.

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Telephone: (213) 623-9300
Facsimile: (213) 623-9924

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

PLEASE TAKE NOTICE that Verity Health System of California, Inc. ("VHS"), and the above-referenced affiliated debtors and debtors-in-possession (the "Debtors") in the above-captioned chapter 11 cases (the "Bankruptcy Cases") pending in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court") and the appellees herein, hereby submit the attached emergency motion (the "Motion") to dismiss the above-captioned appeal from an order of the Bankruptcy Court entered November 14, 2019 filed by Appellant, Strategic Global Management, Inc. ("SGM") based on waiver and lack of standing. The bases for the emergency relief sought in the Motion are as follows: (i) the Debtors face mounting operational losses of approximately $450,000, per day, which threaten their ability to continue operating their hospitals as going concerns into 2020; and (ii) the asset purchase agreement underlying the sale transaction between the Debtors and SGM terminates by its terms if a closing does not occur by December 31, 2019.

PLEASE TAKE FURTHER NOTICE that the Debtors bring the Motion on an emergency basis pursuant to Rule 8013(d) of the Federal Rules of Bankruptcy Procedure, Rule 5.1 of Chapter IV of the Local Rules of the United States District Court for the Central District of California, and Rule 7-19 of Chapter I of the Local Rules of the United States District Court for the Central District of California. **As**

set forth in the Motion, the Debtors request that the Court rule on the Motion not later than December 20, 2019.

PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice of Motion, the *Declaration of Richard G. Adcock* (the "Adcock Declaration") and *Declaration of Tania M. Moyron* (the "Moyron Declaration") attached to the Motion, the *Appendix in Support of the Debtors' Motion to Dismiss the Appeal* (the "Debtors' Appendix") filed concurrently herewith, the arguments of counsel, and any other admissible evidence brought before the Court at or before a hearing on the Motion, if any.

PLEASE TAKE FURTHER NOTICE that the Debtors will serve this Notice of Motion, the Motion, the Adcock Declaration, the Moyron Declaration, and the Debtors' Appendix on counsel to Strategic Global Management, Inc., the appellant herein, and the State of California, the appellee herein, as set forth in the Proof of Service attached hereto. **Further, as set forth in the Moyron Declaration, on December 10, 2019, counsel to the Debtors informed counsel to SGM of the filing of this Motion and further informed counsel to SGM that SGM should submit a response or opposition to the Motion, if any, not later than December 17, 2019, unless the Court otherwise directs pursuant to Rule 8013(a)(3)(A) of the Federal Rules of Bankruptcy Procedure.** To the extent necessary, the Debtors request that the Court waive any further compliance with Rule 7-19 of Chapter I of

the Local Rules of the United States District Court for the Central District of California, and approve service, in addition to the means of service set forth in such Local Rule, by CM/ECF notification, email, and regular mail. In the event the Court sets a hearing on the Motion, the Debtors shall provide notice of entry of the order setting the hearing on each of the foregoing parties and such other parties as the Court directs, including by telephonic notice.

PLEASE TAKE FURTHER NOTICE that, in light of the emergency basis of the relief requested, the Debtors request authority to file a reply in support of the Motion not later than December 19, 2019, which is less than the seven days provided pursuant to Rule 8013(a)(3)(B) of the Federal Rules of Bankruptcy Procedure.

Dated: December 10, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

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

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

2:19-cv-10352-DSF

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession	On Appeal from the United States Bankruptcy Court for the Central District of California
STRATEGIC GLOBAL MANAGEMENT, INC.[1] Appellant v. STATE OF CALIFORNIA; VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.* Appellees	Bankruptcy Court Lead Case No.: 2:18-bk-20151-ER Chapter 11 Date: [TBD] Time: [TBD] Courtroom: 7D Location: 350 W. First Street Los Angeles, CA 90012

DEBTORS' EMERGENCY MOTION TO DISMISS APPEAL

[1] 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 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.

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Telephone: (213) 623-9300
Facsimile: (213) 623-9924

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

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 8012 of the Federal Rules of Bankruptcy Procedure, Appellee Verity Health System of California, Inc., as debtor and debtor in possession in the above captioned jointly administrated chapter 11 cases, hereby discloses that it is a nonprofit public benefit corporation organized under the laws of the State of California and that it has no parent corporation and has no shareholders, and therefore no entity owns or controls ten percent or more of its shares.

TABLE OF CONTENTS

I. Introduction....1

II. Background Facts....4

A. Factual Background....4

B. The Sale....5

C. Attorney General Review and Section 8.6 of the APA....6

D. The Attorney General Conditions and Enforcement Motion....7

E. SGM Expressly Requested an Order Granting the Enforcement Motion....8

F. Settlement with the Attorney General and the Enforcement Order....9

G. The Status of the SGM Sale and Debtors' Economic Circumstances....11

III. Argument....13

A. SGM Expressly and Implicitly Waived the Right to Challenge the Enforcement Order....14

B. SGM Has No Standing to Appeal the Enforcement Order Because It Has No Pecuniary Interest in the Outcome of the Appeal....18

C. Cause Exists to Grant the Motion on an Emergency Basis....21

IV. Conclusion....22

TABLE OF AUTHORITIES

Page(s)

Cases

Abbs v. Sullivan,
963 F.2d 918 (7th Cir. 1992) 19

In re Bankr. Pet. Preparers Who Are Not Certified Pursuant to the Requirements of the Ariz. Sup. Ct.,
307 B.R. 134 (B.A.P. 9th Cir. 2004) 14

Duckor Spradling & Metzger v. Baum Tr. (In re P.R.T.C., Inc.),
177 F.3d 774 (9th Cir. 1999) 18, 21

Envtl. Prot. Info. Ctr., Inc. v. Pac. Lumber Co.,
257 F.3d 1071 (9th Cir. 2001) 19, 20

Fondiller v. Robertson (In re Fondiller),
707 F.2d 441 (9th Cir. 1983) 18, 20

Hamer v. Neighborhood Housing Services of Chicago,
— U.S. —, 138 S. Ct. 13 (2017) 14

In re Hantges,
No. 2:08-cv-00990-KJD-GWF, 2009 WL 10678773 (D. Nev. Sept. 9, 2009) 19

Kane v. Johns-Manville Corp.,
843 F.2d 636 (2d Cir. 1988) 18

In re Sagamore Partners, Ltd.,
620 Fed. Appx. 864 (11th Cir. 2015) 16

Simmons v. Citibank, NA,
594 Fed. Appx. 383 (9th Cir. 2015) 14

Statutes

11 U.S.C. §§101, *et seq.* 1, 4

11 U.S.C. § 363(f) 8

CAL. CORP. CODE §§ 5914(a)(1), 5917 6

Rules

FED. R. BANKR. P. 8013 21

FED. R. BANKR. P. 8013(d)(2)(a) 22

FED. R. BANKR. P. 8013(d)(3) 22

Local Rule 5.1 21

Local Bankr. R. 9021-1(b)(3) 17

Verity Health System of California, Inc. ("VHS"), and the above-referenced affiliated debtors and debtors-in-possession (the "Debtors") in the above-captioned chapter 11 cases (the "Bankruptcy Cases") pending in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court") and the appellees herein, hereby submit this emergency motion[2] (the "Motion") to dismiss the above-captioned appeal (the "Appeal") from an order of the Bankruptcy Court entered November 14, 2019 (the "Enforcement Order") filed by Appellant, Strategic Global Management, Inc. ("SGM" or "Appellant").

I.

INTRODUCTION[3]

This is a frivolous appeal and SGM's latest tactic to forestall the closing of the Sale ordered by the Bankruptcy Court. It is not a garden-variety appeal by an aggrieved party, but rather an appeal by a party who has no standing and waived its right to appeal the Enforcement Order.

---

[2] In support of the Motion, the Debtors submit the attached *Declaration of Richard G. Adcock* (the "Adcock Declaration"), the *Declaration of Tania M. Moyron* (the "Moyron Declaration"), and reference the concurrently-filed *Appendix in Support of the Debtors' Motion to Dismiss Appeal* (the "Debtors' App.")

[3] Capitalized terms in this Introduction have the definitions set forth elsewhere in this Motion.

SGM is the court approved buyer following an extensive and competitive bidding process under a fully executed $610 million asset purchase agreement for the Sale of four of the Debtors' operating Hospitals. The purchase agreement terminates by its terms if the Sale does not close by December 31, 2019.

The Appeal stems from the Bankruptcy Court's Enforcement Order, which granted, in its entirety, the Debtors' motion to sell the Hospitals to SGM free and clear of certain "Additional Conditions" imposed on the Sale by the California Attorney General. SGM filed a Statement of Support in support of the Bankruptcy Court granting Enforcement Motion and benefitted from the entry of the Enforcement Order. SGM, however, now appeals the Enforcement Order allegedly based on its displeasure that the Bankruptcy Court rejected certain language it requested in the Enforcement Order.

SGM waived its appeal rights with respect to the Enforcement Order and does not have standing to pursue this Appeal. SGM expressly and impliedly waived its rights to appeal ***any*** order granting the Enforcement Motion when it (i) filed a Statement of Support requesting that the Court grant the Enforcement Motion without reservation, (ii) requested at the hearing that the Court grant the Enforcement Motion, and (iii) contracted in the APA for the ***exact*** language used in the Enforcement Order, as found by the Bankruptcy Court. Further, SGM lacks any pecuniary interest in the outcome of the Appeal sufficient to confer standing because

the Enforcement Order does not impose any costs SGM not contemplated by the APA, (ii) none of the parties that opposed entry of the Enforcement Order have appealed it such that the Appeal cannot be considered a cross appeal intended to protect threatened contractual rights, and (iii) the Attorney General has consented to the requirements of the APA, which require the Attorney General not to impose any conditions on the Sale beyond those to which SGM expressly agreed would be acceptable and anticipated as part of the purchase price under the APA. Indeed, other than editorial changes to the Enforcement Order, the rejection of which by the Bankruptcy Court does not alter SGM's obligations under the APA, the only possible interest furthered by the Appeal is delay.

Emergency relief is necessary because failure to close the Sale by December 31, 2019, will have a detrimental impact on the Hospitals, the Bankruptcy Cases, and the Debtors' patients and employees. Further, the Debtors face mounting operational losses of approximately $450,000, per day, which threaten the Debtors' ability to continue operating as going concerns into 2020. Based on the foregoing, and for the reasons set forth in greater detail below, the Debtors respectfully request that the Appeal be dismissed on an emergency basis but no later than December 20, 2019.

II.

BACKGROUND FACTS

A. Factual Background

1. On August 31, 2018 (the "Petition Date"), the Debtors in these jointly administered Bankruptcy Cases each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[4] *See* Debtors' App. at 3.

2. On the Petition Date, Debtor VHS, a California nonprofit public benefit corporation, was the sole corporate member of five Debtor California nonprofit public benefit corporations that operated O'Connor Hospital ("OCH") and Saint Louise Regional Hospital ("SLRH"), and currently operates St. Francis Medical Center ("SFMC"), St. Vincent Medical Center ("SVMC"), and Seton Medical Center, including Seton Medical Center Coastside Campus (collectively, "Seton" and, together with OCH, SLRH, SFMC, and SVMC, the "Verity Hospitals"). *See id.* at 4.

[4] 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 "Local Rules" refer to Chapter IV of the Rules of the United States District Court for the Central District of California. All references to the "Local Bankruptcy Rules" are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

3. The scope of the services provided by the VHS, the Verity Hospitals, and their affiliated entities (collectively, "Verity Health System") is exemplified by the fact that in 2017, the Verity Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *See id.*

B. The Sale

4. The sale of SFMC, SVMC, and Seton (collectively, the "Hospitals") as going-concerns (the "Sale") is one of the central objectives of the Debtors' Bankruptcy Cases. The Sale will preserve patient care in the Hospital's communities, protect thousands of jobs for the Hospitals' employees, allow trade creditors to maintain going-forward business relationships with the Hospitals, and (with a $610 million purchase price) presents the most likely source of recovery to unsecured creditors in these Bankruptcy Cases.

5. On January 17, 2019, the Debtors filed a motion (the "Sale and Bidding Procedures Motion") to approve the form of an asset purchase agreement and related "stalking horse" bidding procedures for the sale of the Hospitals. *See* Debtor's App at 67, which the Court approved (the "Bidding Procedures Order"). *See id.* at 176. Appellant, SGM, served as the Stalking Horse Bidder under the terms of the Bidding Procedures Order. *See id.* at 179. The Bidding Procedures Order also approved that certain amended asset purchase agreement between certain of the Debtors and SGM ("APA"). *See id.*; *see also id.* at 212.

6. There was no "Qualified Full Bid" for all four Hospitals, accordingly no auction was held and the Debtors declared SGM as the "winning bidder" of the Hospitals. *See id.* at 842. On May 2, 2019, the Bankruptcy Court entered an order approving the Sale to SGM pursuant to the APA. *See id.* at 853.

C. Attorney General Review and Section 8.6 of the APA

7. The closing of the SGM Sale was subject to review and approval by the California Attorney General (the "Attorney General"). California state law authorizes the Attorney General to review the sale of a non-profit health care facility to a for-profit entity and either (i) consent to, (ii) give conditional consent to, or (iii) not consent to the transaction. *See* CAL. CORP. CODE §§ 5914(a)(1), 5917. Prepetition, the Attorney General imposed conditions on a transaction that recapitalized and restructured Verity Health System (the "2015 Conditions"). *See id.* at 24. The 2015 Conditions broadly impacted the Debtors operations, and locked the Verity Health System into financial and operational obligations that made success impossible and, in large part, precipitated these Bankruptcy Cases. *See id.* at 28. Accordingly, the Debtors and SGM heavily negotiated provisions of the APA addressing the Attorney General's review and imposition of conditions in connection with the Sale. *See id.* at 946-947.

8. Section 8.6 of the APA is the result of the negotiations between the Debtors and SGM with respect to Attorney General conditions the parties anticipate

could be imposed on the Sale. SGM agreed to continue to operate the Hospitals and abide by the vast majority of the 2015 Conditions, as set forth in Schedule 8.6 to the APA. Specifically, Section 8.6 of the APA is titled: "Attorney General Provisions" and provides, in part, as follows:

> Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth, as Purchaser Approved Conditions, in Schedule 8.6. In the event the CA AG imposes conditions on the transactions contemplated by this Agreement, or on Purchaser in connection therewith, which are materially different than the Purchaser Approved Conditions set forth on Schedule 8.6 (the "Additional Conditions"), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order ("Supplemental Sale Order") finding that the Additional Conditions are an "interest in property" for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser. For purposes of this Section 8.6, Additional Conditions which individually or collectively impose a direct or indirect cost to Purchaser of $5 million, or more, shall be conclusively deemed to be "materially different."

Id. at 247-249.

D. The Attorney General Conditions and Enforcement Motion

9. On September 25, 2019, the Attorney General consented to the Sale subject to certain conditions (the "2019 Conditions"). *See id.* at 991-1030. The 2019

Conditions included numerous Additional Conditions that were materially different than those SGM contractually agreed to in Schedule 8.6. SGM's Chief Executive Officer confirmed that, SGM would not close the Sale if the Additional Conditions remained extant. *See id.* at 948.

10. To avoid the impact of the Additional Conditions on the SGM Sale, the Debtors were required to seek an order enforcing the Sale Order, finding that the Sale was free and clear of the 2019 Conditions, and limiting the Sale to only those conditions to which SGM contractually agreed to assume in Schedule 8.6 of the APA. *See id.* at 248. On September 30, 2019, the Debtors filed a motion (the "Enforcement Motion") to (a) enforce the Sale Order, and (b) consistent with Section 8.6 of the APA, obtain an order finding that the Sale was "free and clear" of the Additional Conditions pursuant to § 363(f).. *See id.* at 870.

E. SGM Expressly Requested an Order Granting the Enforcement Motion

11. On October 10, 2019, SGM filed a statement (the "Statement of Support") in support of the Enforcement Motion. In the Statement of Support, SGM represented that

> SGM will not close the Sale unless the Debtors timely obtain an order from the Court finding that the Additional Conditions are "interests in property" that can be sold free and clear pursuant to Section 363(f) of the Bankruptcy Code, as described more fully in Section 8.6 of the APA.

Id. at 1157. The Statement of Support further represented that

> The AG's decision to impose the Additional Conditions (the "Decision") . . . now entitles SGM to "terminate the [APA] and receive the return of its Good Faith Deposit" if the Debtors determine not to seek, or cannot timely (i.e., within 60 days of the Decision) an order from this Court finding "that the Additional Conditions are an 'interest in property' for purposes of 11 U.S.C. § 363(f), and that the assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser."

Id. at 1157-1158.

12. Based on the foregoing, SGM expressly requested that the Bankruptcy Court enter an order granting the Enforcement Motion. *See id.* at 1159 ("For the foregoing reasons, ***SGM respectfully requests that the Court grant the Motion***, and grant such other and further relief as is just and appropriate.") (emphasis added).

F. Settlement with the Attorney General and the Enforcement Order

13. On October 23, 2019, the Court entered a memorandum of decision (the "Memorandum Decision") granting the Enforcement Motion and requesting that the Debtors lodge an order consistent with the Memorandum Decision. *See id.* at 1165. After entry of the Memorandum Decision, the Attorney General, the Debtors, and SGM engaged in discussions concerning a proposed form of order. *See id.* at 1199. The Debtors and the Attorney General worked diligently for ten days to satisfy SGM's concerns with the wording of the Proposed Order. *See id.* Despite their efforts, the Debtors were unable to obtain SGM's joinder in the Stipulation; however, after careful consideration, the Debtors and their constituents determined

that entry of the Proposed Order was in the best interests of the Debtors' estates. *See id*.

14. On November 8, 2019, the Debtors and the Attorney General filed a stipulation (the "Stipulation") and lodged a proposed order granting the Enforcement Motion (the "Proposed Order"). *See id.* at 1189, 1197, 1204. Pursuant to the Stipulation, (i) the Attorney General agreed to the Proposed Order authorizing the Sale free and clear of "Additional Conditions," (ii) the Debtors agreed to obtain a withdrawal of the Memorandum Decision, and (iii) the Attorney General agreed not to appeal the Proposed Order. *See id.* at 1191.

15. On November 11, 2019, SGM filed an objection to the Proposed Order and lodged a competing order. *See id.* at 1208, 1228. The Debtors and the Official Committee of Unsecured Creditors (the "Committee") filed responses. *See id.* at 1236, 1241.

16. On November 13, 2019, the Bankruptcy Court held a hearing on the Stipulation, at which the Court overruled SGM's objection to the Proposed Order. *See id.* at 1252.

17. On November 14, 2019, the Bankruptcy Court entered the Enforcement Order granting the Enforcement Motion. *See id.* at 1318. The Enforcement Order provides, in part, that

1. The Motion is GRANTED.

. . .

> 3. Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the "APA")) are an "interest in property" for purposes of 11 U.S.C. § 363(f). The Assets (as defined in the APA) are being sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA)

Id. at 1319. On November 29, 2019, SGM filed a notice of appeal related to the Enforcement Order. *See id.* at 1321.

G. The Status of the SGM Sale and Debtors' Economic Circumstances

18. The Debtors' Bankruptcy Cases and the SGM Sale will change dramatically after December 31, 2019. ***First***, since the Petition Date—more than one year ago—the Debtors have sustained daily operational losses that currently exceed $450,000 per day. *See* Adcock Decl. ¶ 7. The Debtors cannot sustain these losses *ad infinitum*. *See id.* The Debtors obtained a consensual cash collateral agreement to fund operations; however, the agreement terminates if the Debtors do not confirm a plan by December 31, 2019, after which the Debtors will have no other likely source of funding or financing operations. *See id.* The Debtors hold $28.4 million cash-on-hand in their operating accounts and an additional $75.7 million of escrowed proceeds from the Debtors' sale of SLRH and OCH to the County of Santa Clara. *See id.* However, as responsible stewards of patient safety, the Debtors must

maintain or have access to sufficient cash-on-hand to close the Hospitals safely in the event the Sale does not close. *See id.*

19. ***Second***, the anticipated costs of operations will escalate significantly after December 31, 2019. *See id.* ¶ 8. By way of example, the Debtors continue to confront employee attrition due to the bankruptcy process, which means the Debtors must increasingly turn to more expensive temporary staffing alternatives (e.g., *locum tenens* physicians and registry nurses). *See id.* Additionally, the Debtors are required to maintain workers' compensation insurance while they maintain operations. *See id.* The Debtors current workers' compensation insurance policy expires on January 1, 2020 and the sole alternative provider is a California state program with significantly more expensive annual premiums (more than $16 million per year). *See id.*

20. ***Third***, the APA terminates by its terms on December 31, 2019 (the "APA Termination Date"). *See* Debtors' App. at 250. The APA requires that SGM close within 10 business days of the Debtors' satisfaction of all conditions to closing. *See id.* at 219. Thus, December 16, 2019 is the outside date on which the Debtors can satisfy all conditions to closing and obligate SGM to close by the December 31, 2019 APA termination date. SGM has presented a litany of baseless objections to promptly closing the Sale. Among them, SGM asserts that the Sale cannot close because the alleged drafting errors in the Enforcement Order present a threat of

future litigation with the Attorney General giving rise to a "Material Adverse Effects" under the APA. *See id.* at 1210. On November 27, 2019, the Bankruptcy Court found that all conditions to closing were satisfied and that SGM is required to close under the terms of the APA not later than December 5, 2019. *See id.* at 1365.[5] Nevertheless, SGM did not close the Sale on December 5, 2019. *See* Moyron Decl. ¶ 3.

III.

ARGUMENT

SGM is attempting to delay the closing beyond the December 31, 2019 APA Termination Date as a means to extract a more favorable purchase price or renege on the entire transaction because of, as the Bankruptcy Judge put it, "buyers remorse." *See* Debtors' App. at 1398. The Debtors respectfully request that this Court dismiss the Appeal because SGM (i) waived the right to challenge the Enforcement Order in its Statement of Support, and (ii) lacks standing because the outcome of the Appeal will have no pecuniary effect on SGM. The Debtors submit that cause exists to grant this relief on an emergency basis in light of the Debtors'

[5] SGM separately appealed the Bankruptcy Court's orders (i) finding that Section 8.6. of the APA is satisfied and (ii) finding that SGM is obligated to close the Sale because the Debtors satisfied all conditions to closing. *See* Debtors' App. at 1353, 1355, 1373, 1375. As of the date of this Motion, SGM has not sought stays pending appeal of any of its three appeals.

circumstances, including the economic impact of the Sale on the Hospitals and the Bankruptcy Cases.

A. SGM Expressly and Implicitly Waived the Right to Challenge the Enforcement Order.

The SGM waived the right to appeal any order granting the Enforcement Motion—both explicitly and implicitly—when it filed the Statement of Support, failed to object on the record at the hearing on the Enforcement Motion, and contracted for the exact language contained in the Enforcement Order. Express waiver arises where a litigant intentionally abandons a known right. *See Hamer v. Neighborhood Housing Services of Chicago*, — U.S. —, 138 S. Ct. 13, 17 n.1 (2017) ("waiver is the intentional relinquishment or abandonment of a known right"). Further, a litigant may implicitly waive an issue for appellate purposes by failing to raise the issue in lower court proceedings. *See In re Bankr. Pet. Preparers Who Are Not Certified Pursuant to the Requirements of the Ariz. Sup. Ct.*, 307 B.R. 134, 140-141 (B.A.P. 9th Cir. 2004) ("[I]t is not evident from Brown's excerpts of record that he raised to the bankruptcy court the issue of the validity of the state rule, nor did he brief the question in this appeal. In such circumstances, we need not consider his argument.") (citing *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956-957 n.1 (9th Cir. 2002) ("In general, a party who fails to raise an issue in the district court, cannot raise it on appeal.")); *see also Simmons v. Citibank, NA*, 594 Fed. Appx. 383, 384

(9th Cir. 2015) ("Simmons has raised other arguments, but these were not asserted in the district court. Accordingly, these arguments are waived and need not be addressed.") (unpublished).

The Statement of Support constitutes an enforceable express waiver of the issues raised in this Appeal. The Statement of Support is the only pleading SGM filed in connection with the Bankruptcy Court's consideration of the Enforcement Motion. In the prayer for relief, SGM specifically requested that the Court grant the Enforcement Motion. *See* Debtors' App. at 1159 ("For the foregoing reasons, ***SGM respectfully requests that the Court grant the Motion***, and grant such other and further relief as is just and appropriate.") (emphasis added). The relief requested by SGM includes no qualification or limitation on the specific terms of the Enforcement Order, and the Enforcement Order provides the ***exact*** relief requested by SGM. *See id.* at 1319 (providing that the "Motion is GRANTED"). Further, consistent with the Statement of Support, SGM's counsel requested entry of an order consistent with the Bankruptcy Court's tentative ruling to grant the Enforcement Motion. Counsel's sole statement on the record at the hearing on the Enforcement Motion was that

> in connection with the Debtors' emergency motion, we have submitted the declaration of Peter Baronoff, which the Debtor filed along with its moving papers. We also submitted a statement in support of the sale—I'm sorry, in support of the motion. We are prepared to rest on the Court's tentative.

See id. at 1449. Such express waivers are enforced by appellate courts. *See, e.g.*, *In re Sagamore Partners, Ltd.*, 620 Fed. Appx. 864, 870-871 (11th Cir. 2015) (enforcing express waiver of right to payment of late fees set forth in amended proof of claim). Accordingly, the Appeal should be dismissed because SGM expressly waived its right to object the Enforcement Order.

Further, the Statement of Support, the statement of SGM's counsel at the hearing on the Enforcement Motion, and the terms of the APA constitute an implicit waiver of the right to appeal the Enforcement Order. As discussed above, SGM's sole pleading related to the Enforcement Motion requests that the Bankruptcy Court grant the Enforcement Motion without limitation. *See* Debtors' App. at 1159. SGM's representation at the hearing on the Enforcement Motion—requesting an order granting the Enforcement Motion without limitation—is likewise (and at minimum) an implicit waiver of the right to appeal an order granting the Enforcement Motion. Further, the Enforcement Order incorporated nearly *verbatim* the language set forth in Section 8.6 of the APA, which SGM agreed would satisfy the Debtors' obligation to obtain a "Supplemental Sale Order." *Compare id.* at 247-249 *with id.* at 1319. SGM cannot relitigate the issues it failed to raise during the Court's consideration of the Enforcement Motion.

Finally, the actual entry of the Enforcement Order created an express and freely negotiated duty on the part of SGM to "***reasonably cooperate in any efforts***

to render the Supplemental Sale Order a final, non-appealable order."[6] *See id.* at 248. In other words, SGM waived the right to appeal entry of the Enforcement Order because it was bound to support the Debtors' efforts to render the Enforcement Order a final non-appealable order. SGM did not cure its waiver of appeal rights by belatedly objecting to the Proposed Order. Pursuant to the Local Bankruptcy Rules, only those parties that filed objections to the underlying contested motion are entitled to object to the proposed form of order granting the contested motion. *See* Local Bankr. R. 9021-1(b)(3). SGM's belated objection to the Proposed Order was untimely and a nullity in respect of preserving issues for appeal. Accordingly, the Appeal should be dismissed based on SGM's express and implied waiver of any objection to the Enforcement Motion.

---

[6] Section 8.6 contains the following sentence:

> During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than $500,000.

See Debtors' App. at 248.

B. SGM Has No Standing to Appeal the Enforcement Order Because It Has No Pecuniary Interest in the Outcome of the Appeal.

SGM does not have standing to appeal the Enforcement Order because (i) the Appeal is not outcome-determinative of SGM's obligation to close on the Sale, and (ii) SGM's concerns of future litigation with the Attorney General are insufficient to confer standing. In the Ninth Circuit, appellate standing is limited to "person[s] aggrieved" by a bankruptcy court order. *Duckor Spradling & Metzger v. Baum Tr. (In re P.R.T.C., Inc.)*, 177 F.3d 774, 777 (9th Cir. 1999). Under this prudential standing doctrine, a "person aggrieved" is a party who is "directly and adversely affected pecuniarily" by the order. *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 443 (9th Cir. 1983). Specifically, "the order must diminish the appellant's property, increase its burdens, or detrimentally affect its rights." *P.R.T.C., Inc.*, 177 F.3d at 777 (citing *Fondiller*, 707 F.2d at 442). Courts are less inclined to find prudential standing where "marginal parties in the bankruptcy proceedings . . . face potential harm incident to the bankruptcy court's orders." *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 642 n.3 (2d Cir. 1988) (citing *Fondiller*, 707 F.2d at 443).

SGM is the successful party at the Bankruptcy Court. SGM's Statement of Support requested entry of an order granting the Enforcement Motion, as did its counsel at the hearing. *See* Debtors' App. at 1159, 1449. SGM merely objects to the wording of the Enforcement Order. *See id.* at 1211-1213. "But a winner cannot

appeal a judgment merely because there are passages in the court's opinion that displease him—that may indeed come back to haunt him in a future case." *Abbs v. Sullivan*, 963 F.2d 918, 924 (7th Cir. 1992) (citing *California v. Rooney*, 483 U.S. 307 (1987) (per curiam); *Elec. Fittings Corp. v. Thomas & Betts Co.,* 307 U.S. 241, 242 (1939)). SGM cannot claim that the Enforcement Order provides less than the relief sought because it expressly grants the Enforcement Motion in its entirety and includes the language in the APA that it required. *See, e.g.*, *Envtl. Prot. Info. Ctr., Inc. v. Pac. Lumber Co.*, 257 F.3d 1071, 1075 (9th Cir. 2001) (finding that "there is nothing for us to reform" where judgment merely states that a motion is granted or denied).

SGM incorrectly argued below that its objection to the Proposed Order was necessary because the Proposed Order was "unnecessarily ambiguous" and "may actually result in litigation between the AG and SGM." *See* Debtors' App. at 1211. The APA never required the Debtors to obtain an order that was unassailable on appeal. *See id.* at 247-249. Nevertheless, the Attorney General waived any right to appeal in the Stipulation and Enforcement Order. *See id.* at 1191, 1320. SGM's mere desire to avoid ***future*** litigation over issues not addressed in the APA is inadequate to confer standing. *See In re Hantges*, No. 2:08-cv-00990-KJD-GWF, 2009 WL 10678773, at *2 (D. Nev. Sept. 9, 2009) (citing *P.R.T.C.*, 177 F.3d at 778) ("A mere desire to prevent future litigation does not detrimentally affect a debtor

creating standing to appeal an order of the bankruptcy court."); *see also Fondiller*, 707 F.2d at 443 (finding that debtor's wife was not "aggrieved," because her "only demonstrable interest in the order is as a potential party defendant in an adversary proceeding"); *accord Envtl. Prot. Info. Ctr., Inc.*, 257 F.3d at 1076.

Further, SGM is (i) obligated to close the Sale at the purchase price of $610 million regardless the outcome of this Appeal, and (ii) required to close the Sale within 10 business days of the Debtors' satisfaction of all conditions to closing set forth in the APA. *See* Debtors' App. at 219. Under the APA, each condition to closing is deemed satisfied unless SGM provides the Debtors (i) notice of a failure to perform and (ii) alleged failure to perform has a "Material Adverse Effect." *See id.* at 247.

The Bankruptcy Court entered findings that all conditions to closing were satisfied and that was no "Material Adverse Effect." *See id.* at 1368. The Bankruptcy Court found that the term "Material Adverse Effect" is limited to "the occurrence of unexpected events which have substantially reduced the value of the Hospitals,[7]" which would include "the Debtors' failure to maintain the Hospitals' licensure, or the Debtors' operation of the Hospitals in a manner that caused

[7] The determination as to whether there has been a "Material Adverse Effect" is a decision that the APA vests exclusively in the Bankruptcy Court without the right to appeal. *See id.* at1368.

regulatory authorities to close key departments within the Hospitals, such as the emergency department or pharmacy." *See id.* at 1370. The Enforcement Order has no such impact. Indeed, the Enforcement Order adopts nearly *verbatim* the language to which SGM agreed in Section 8.6 of the APA. Accordingly, SGM's pecuniary interests are not implicated by this Appeal because SGM is obligated to close the Sale at the purchase price ***regardless*** whether SGM obtains its preferred editorial changes to the Enforcement Order.

SGM cannot claim to be an aggrieved party because the outcome of this Appeal will not diminish SGM's property, increase its burdens, or detrimentally affect its rights. *See P.R.T.C., Inc.*, 177 F.3d at 777. SGM is obligated to pay the $610 million purchase price under the APA because the Enforcement Order—in either its current form or with the revisions sought by SGM—provides SGM precisely the relief it sought in the Statement of Support and contracted for in Section 8.6 of the APA. The substantive relief SGM seeks in this Appeal does not meet the Ninth Circuit's fundamental requirements to confer standing. Accordingly, the Debtors respectfully request that the Court dismiss the Appeal.

C. <u>Cause Exists to Grant the Motion on an Emergency Basis</u>.

The Motion complies with Rule 8013 and Local Rule 5.1 governing emergency motions. The Motion is accompanied by the Adcock Declaration, which sets forth the facts showing the existence and nature of the immediate and irreparable

harm concerning the Sale and these Bankruptcy Cases. *See* Rule 8013(d)(2)(a). The Motion is also accompanied by the Debtors' Appendix, which includes, among other things, the notice of appeal and the Enforcement Order. *See* Local R. 5.1.1, 5.1.2. Further, the Debtors have made "every practicable effort to notify opposing counsel" of the response deadline. *See* Moyron Decl. ¶ 4; Rule 8013(d)(3). As set forth herein, the Debtors have demonstrated cause to grant the Motion on an emergency basis not later than December 20, 2019 in light of the impact to the Debtors' ability to operate as going concerns and the December 31, 2019 termination of the Sale under the APA.

IV.

CONCLUSION

The Debtors respectfully request that the Court enter an order (i) dismissing the Appeal on an emergency basis not later than December 20, 2019 and (ii) granting such other and further relief as is just and necessary under the circumstances.

Dated: December 10, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

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

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

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, submit this Declaration in support of the *Debtors' Motion to Dismiss Appeal* (the "Motion"),[8] and hereby state as follows:

1. I have personal knowledge of the facts stated in this Declaration, except as to those stated on information and belief, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. ("VHS"). Prior thereto, I served as VHS's Chief Operating Officer since August 2017.

3. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

[8] Capitalized terms not otherwise defined herein have the definitions set forth in the Motion.

4. Prior to VHS, from 2014 until 2017, I served as Executive Vice President and Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the Dakotas dedicated to health and healing. In this role, I was responsible for leading Sanford Health's growth and innovation, in addition to direct operational oversight of the following related entities: Sanford Research, Sanford Health Plan; Sanford Foundation (a philanthropic fundraising foundation); Sanford Frontiers (a commercial and real estate company); Profile by Sanford (a scientific weight loss program); and Sanford World Clinic (which operates clinics in multiple countries).

5. From 2012 to 2017, I served as the President of Sanford Frontiers and had the responsibility of starting a new entity within Sanford Health focused on innovative ventures. From 2008 to 2012, I served as Executive Vice President of Sanford Clinic. I was responsible both for (i) working directly with the President of the Clinic to the lead team of Vice Presidents in all aspects of management, and (ii) Sanford World Clinics operations, including the design, opening and operation of several global clinics. From 2006 to 2008, I served as the Vice President of Sanford Clinic and was responsible for leading strategic, operational and financial aspects within Sanford Clinic. From 2004 to 2006, I served as Director of Clinical Operations at Sanford Children's Specialty Clinic and led the Pediatric Subspecialty Physician program and the clinical practice through all facets of the operation.

6. Prior to Sanford Health, I served as the Director of Engineering and Six Sigma Master Black Belt at GE Medical Systems, and before that served as the Vice President of Research and Development and the Co-Owner/Founder of Micro Medical Systems. I have a bachelor of science in business administration and a masters of business administration in healthcare management.

7. The Debtors incur operational losses of $450,000, per day. The Debtors cannot sustain these operational losses *ad infinitum*, particularly since the costs of delay are escalating beyond that anticipated by the Debtors. The Debtors obtained a consensual cash collateral agreement to fund operations; however, the agreement terminates if the Debtors do not confirm a plan by December 31, 2019, after which the Debtors will have no other likely source of funding or financing operations. The Debtors hold $28.4 million cash-on-hand in their operating accounts and an additional $75.7 million of escrowed proceeds from the Debtors' sale of SLRH and OCH to the County of Santa Clara. However, as responsible stewards of patient safety, the Debtors must maintain or have access to sufficient cash-on-hand to close the Hospitals safely in the event the Sale does not close.

8. The Debtors anticipate the incremental costs of operations will continue to increase as the Bankruptcy Cases continue. By way of example, the Debtors continue to confront employee attrition due to the bankruptcy process, which means the Debtors must increasingly turn to more expensive temporary staffing alternatives

(e.g., *locum tenens* physicians and registry nurses). Additionally, the Debtors are required to maintain workers' compensation insurance while they maintain operations. The Debtors current workers' compensation insurance policy expires on January 1, 2020 and the sole alternative provider is a California state program with significantly more expensive annual premiums (more than $16 million per year).

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

Executed this 9th day of December, 2019, in Los Angeles, California.



Richard G. Adcock

DECLARATION OF TANIA M. MOYRON

I, Tania M. Moyron, submit this Declaration in support of the *Debtors' Motion to Dismiss Appeal* (the "Motion"),[9] and hereby state as follows:

1. I have personal knowledge of the facts stated in this Declaration, except as to those stated on information and belief, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I am a Partner at Dentons US LLP, at 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017-5704, and am one of the attorneys primarily responsible for representing Verity Health System of California, Inc., a California nonprofit benefit corporation and the Debtor herein, and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors").

3. On December 3, 2019, I received an email from Gary Klausner, counsel to the Appellant, SGM. In his email, Mr. Klausner informed me that SGM did not intend to close the Sale on December 5, 2019. SGM did not close the Sale on December 5, 2019.

[9] Capitalized terms not otherwise defined herein have the definitions set forth in the Motion.

4. On December 9, 2019, I called Mr. Klausner at his office, and informed him that the Debtors intended to file the Motion. On December 10, 2019, I emailed Mr. Klausner and informed Mr. Klausner that the Debtors would file the Motion today, December 10, 2019. In the email I further informed Mr. Klausner that (i) SGM must file a response to the Motion not later than December 17, 2019, unless the Court otherwise directs, pursuant to Rule 8013(a)(3)(A), and (ii) that the Motion would seek entry of an order on an emergency basis not later than December 20, 2019.

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

Executed this 10th day of December, 2019, in Los Angeles, California.

/s/ Tania M. Moyron
Tania M. Moyron

CERTIFICATE OF COMPLIANCE

1. This Motion complies with the word limit of FED. R. BANKR. P. 8013(f) because, excluding the parts of the Motion exempted by FED. R. BANKR. P.8013(a)(2)(C) and FED. R. BANKR. P. 8015(g), this Motion contains 5,159 words.

2. This Motion complies with the typeface requirements of FED. R. BANKR. P. 8015(a)(5) and the type-style requirements of FED. R. BANKR. P. 8015(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: December 10, 2019

/s/ Tania M. Moyron
Tania M. Moyron

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Central District of California by using the CM/ECF system.

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.

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

Courtesy Copies via Personal Delivery

Chambers of the Honorable Dale S. Fischer
First Street Courthouse
350 West 1st Street
Courtroom 7D
Los Angeles, CA 90012

Served Via Email

David K. Eldan
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
David.Eldan@doj.ca.gov

Gary E. Klausner
Levene, Neale, Bender, Yoo & Brill L.L.P
10250 Constellation Blvd., Ste. 1700
Los Angeles, CA 90067
gek@lnbyb.com

/s/ Tania M. Moyron
Tania M. Moyron

Exhibit E

Exhibit E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al. Debtors.	CV 19-10352 DSF Order DENYING Emergency Motion to Dismiss Appeal (Dkt. No. 2); Order GRANTING Motion to be Named as Appellee (Dkt. No. 11)

Appellant Strategic Global Management, Inc. has appealed an order of the Bankruptcy Court acknowledging that a certain sale of hospital assets is free and clear from certain requirements that the Attorney General of California wished to impose. Debtors have moved to dismiss the appeal due to waiver and lack of standing.[1]

It is questionable whether any exigency exists that could be meaningfully resolved by dismissal of this appeal. Appellant may or may not close the relevant transaction in a timely fashion. If it doesn't, Debtors may or may not run out of operating cash. The existence of a pending appeal at the time the deal falls through may be relevant to

[1] Because it is a party in interest that actively took part in the proceedings below, the Creditors' Committee's motion to be named as an appellee is GRANTED. But regardless of its right to intervene, the Court declines to consider any additional arguments raised by the Creditors' Committee in its joinder filed on December 17. December 17 was the deadline for Appellant to respond to the emergency motion to dismiss. The Court will not consider substantive arguments to which the Appellant had no opportunity to respond.

sorting out the legal responsibilities of the various parties somewhere in the future, but dismissal of the appeal would not force Appellant to close or cause cash to appear in the Debtors' accounts. Nonetheless, the Court will decide the motion now given that the matter has been briefed and the Court is ruling in favor of the party that opposes the emergency treatment of the motion.

Appellant did not waive its right to appeal the order entered by the Bankruptcy Court by virtue of its joinder in the original motion for relief. Waiver is the "intentional relinquishment or abandonment of a known right." Hamer v. Neighborhood Hous. Servs. of Chicago, 138 S.Ct. 13, 17 n.1 (2017). Appellant (presumably) agreed with the arguments made in Debtors' original motion and the Bankruptcy Court issued an extensive opinion agreeing with the arguments made in that motion. Appellants do not appeal that. Instead, they appeal the final order later entered by the Bankruptcy Court that was a product of an explicit compromise between Debtors and the Attorney General and that did not necessarily provide the entirety of relief requested in the motion. That compromise and order also resulted in the original opinion being vacated. There is no question that Appellants vigorously opposed the entry of the order and claimed that it did not provide them with the protection sought in the motion and to which they are entitled. While Appellants' arguments may ultimately turn out to be meritless, they did not waive the right to appeal an order that allegedly does not provide the result they had joined in seeking.

A party "aggrieved" by an order of a bankruptcy court generally has standing to appeal that order. "An appellant is aggrieved if directly and adversely affected pecuniarily by an order of the bankruptcy court; in other words, the order must diminish the appellant's property, increase its burdens, or detrimentally affect its rights." In re P.R.T.C., Inc., 177 F.3d 774, 777 (9th Cir. 1999) (internal quotation marks omitted). The premise of the appeal is that the order entered by the Bankruptcy Court does not provide the relief Appellant is entitled to as the prospective purchaser of assets from the Debtors. Appellants claim that the deficiencies in the order could expose them either to liability from an action by the Attorney General or to a reduced value of the

assets if the Attorney General asserts the existence of certain obligations on the holder of the assets in the future. Again, these arguments may ultimately be found to be substantively meritless, but Appellant has a pecuniary interest in that determination.

Debtors' assertion that generally a prevailing party has no standing to challenge the language of the lower court decree is incorrect. First, it is clear if a party that receives only some of what it sought, it is entitled to appeal. Forney v. Apfel, 524 U.S. 266, 271 (1998). In its view, Appellant only received part of what it sought or, alternatively, the ambiguity of the Bankruptcy Court's order rendered its purported victory illusory. Debtors' assertions to the contrary are its position on the substance of the appeal – that the order entered by the Bankruptcy Court was sufficient and everything Appellant wanted. In that sense, Debtors' standing argument begs the entire question posed by the appeal. In addition, language contained in an appealable decree – usually the judgment – has long been held to be subject to reformation on appeal by the prevailing party. See Envtl. Prot. Info. Ctr., Inc. v. Pac. Lumber Co., 257 F.3d 1071, 1075 (9th Cir. 2001) (citing Elec. Fittings Corp. v. Thomas & Betts Co., 307 U.S. 241, 242 (1939)). The relevant limitation is that "[a] party may not appeal from a judgment or decree in his favor, for the purpose of obtaining a review of findings he deems erroneous which are not necessary to support the decree." Elec. Fittings Corp., 307 U.S. at 242. This is an appeal of the direct applicable language of the appealable decree, not an appeal for a review of unnecessary findings.

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: December 20, 2019

Dale S. Fischer
United States District Judge

Exhibit F

Exhibit F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re Verity Health Systems of California, Inc., Debtor.	CV 19-10352 DSF CV 19-10354 DSF CV 19-10356 DSF Order VACATING Orders of the Bankruptcy Court

The Court previously found that these consolidated appeals should be dismissed as moot. The appeals all involved enforcement of a sale of hospitals from the Debtors-Appellees to Appellant. All parties agreed that the sale had been abandoned by the Debtors-Appellees. As a result, the Court found that the appeals were moot because their resolution would not change the material position of the parties.

The Court provided Appellees an opportunity to argue why the appealed-from orders should not be vacated. See Camreta v. Greene, 563 U.S. 692, 713 (2011) ("The equitable remedy of vacatur ensures that those who have been prevented from obtaining review to which they are entitled are not treated as if there had been a review.") (quotation marks and ellipses omitted). The Court later allowed Appellant to reply to Appellees' argument.

The Court has reviewed these two filings and finds that the "established practice" of vacatur is appropriate. Appellees' primary argument involves a previous memorandum decision of the Bankruptcy Court that one of the appealed-from orders (the AG Order) had vacated. Appellees argue that vacatur of the AG Order would inappropriately reinstate the prior vacated memorandum decision. The Court

expresses no opinion on whether vacatur of the AG Order would automatically reinstate the prior vacated memorandum decision, but it is not material because the vacated memorandum decision *also* concerns the sale from the Debtors-Appellees to the Appellant and also appears to be essentially moot. That sale is not going to happen, and Appellees make no effort to demonstrate why the reinstatement of the now-moot vacated memorandum decision concerning that sale would occur or could prejudice the Attorney General of California or any other party.[1]

As for the other appealed-from orders, Appellees argue only that they were interlocutory orders and interlocutory orders are typically not vacated if found to be moot on appeal. Whether or not those orders are interlocutory, the Court sees no reason to leave them in effect as they concern Appellant's purported responsibility to close the now-abandoned sale and can only cause mischief in the ongoing litigation between the parties over that failed transaction.

The orders of the Bankruptcy Court appealed from in appeals CV 19-10352 DSF, CV 19-10354 DSF, and CV 19-10356 DSF are VACATED.

IT IS SO ORDERED.

Date: June 10, 2020

Dale S. Fischer
United States District Judge

[1] The Court understands that the *legal issues* decided by the Bankruptcy Court in that memorandum decision could be relevant to future proceedings, but that does not change the fact that the specific controversy that was ruled on – the imposition of conditions on the sale of hospitals to Appellant – is no longer relevant or at issue.

Exhibit G

Exhibit G

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General
KENNETH K. WANG
Deputy Attorney General
State Bar No. 201823
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6217
Fax: (213) 897-2805
E-mail: Kenneth.Wang@doj.ca.gov
Attorneys for Creditor
California Department of Health Care Services

IN THE UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re: **VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al.,** Debtor and Debtors In Possession.	CASE NO. 2:18-bk-20151-ER **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 (ECF NO. 1704)** Hearing: April 17, 2019 Time: 10:00 a.m. Courtroom: 1568 Judge Ernest M. Robles
Affects All Debtors. Affects Verity Health System of California, Inc. Affects O'Connor Hospital Affects Saint Louise Regional Hospital /x/ Affects St. Francis Medical Center /x/ Affects St. Vincent Medical Center /x/ 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 /x/ 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.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PROCEDURAL BACKGROUND	2
FACTUAL BACKGROUND	2
STATUTORY BACKGROUND	2
I. Administration of the Medi-Cal Program	2
II. Medi-Cal Financing	3
III. Delivery of Medi-Cal Services	4
IV. Payments to Hospitals for Medi-Cal Services	5
V. Hospital Quality Assurance Fee	6
VI. Statutory Basis for Collection of HQA Fees	6
FACTUAL BACKGROUND	7
I. St. Vincent Medical Center's HQA Fee Debt to Medi-Cal	7
II. Seton Medical Center's HQA Fee Debt to Medi-Cal	8
III. St. Francis Medical Center's HQA Fee Debt to Medi-Cal	9
IV. St. Vincent Dialysis Center	10
IV. Debtors Continue as Medi-Cal Providers Post Petition	10
ARGUMENT	10
I. Medi-Cal Agreements Are Executory Contracts	10
II. Case Law Affirms that the Agreements Are Executory Contracts	13
III. The Agreements Cannot Be Sold Free and Clear of Debt Owed to Medi-Cal under 11 U.S.C. § 363	15
IV. The Agreements, as Executory Contracts, Require Cure of Defaults and Debts	19
V. Debtors' Agreements Require Successor Liability by the Buyer	20
CONCLUSION	21

TABLE OF AUTHORITIES

Page

CASES

Atkin v. Parker
472 U.S. 115 (1985) 16

Bell v. Burson
402 U.S. 535 (1971) 16

Cervoni v. Secretary of Health, Education and Welfare
581 F.2d 1010 (1st Cir. 1978) 16

Devine v. Cleland
616 F. 2d 1080 (9th Cir. 1980) 16

Erickson v. United States Department of Health and Human Services
67 F. 3d 858 (9th Cir. 1995) 16, 17

Goldberg v. Kelly
397 U.S. 254, 262, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970) 15

In re Berks Behavioral Health, LLC
2010 WL 4922173 (Bankr. E.D. Pa. 2010) 17

In re Gardens Regional Hospital and Medical Center, Inc.
2018 WL 1354334 12

In re Gardens Regional Hospital and Medical Center, Inc. (*In re Gardens*)
569 B.R. 788 (Bankr. C.D. Cal. 2017) 11, 13, 15

In re Hefferman Memorial Hospital District
192 B.R. 228 (S.D. Cal. 1996) 14, 15

In re Holland Enterprises, Inc. (*In re Holland*)
25 B.R. 301 (Bankr. E.D. N.C. 1982) 11, 19, 20

In re Holyoke Nursing Home, Inc.
372 F.3d 1 (1st Cir. 2004) 13, 14

In re Memorial Hosp. of Iowa County, Inc.
82 B.R. 478 (W. D. Wis. 1988) 15, 19

TABLE OF AUTHORITIES
(continued)

Page

In re Monsour Medical Center
8 B.R. 606 (Bankr. W.D. Pa. 1981) 10, 11, 14, 15

In re Octagon Roofing
123 B.R. 583 (Bankr. N.D. Ill. 1991) 18

In re Slater Health Center, Inc.
294 B.R. 423 (Bankr. D. RI. 2003) 14

In re St. Johns Home Health Agency Co.
173 B.R. 238, 242 n.1 (S.D. Fl. 1994) 14

In re St. Mary Hospital
89 B.R. 503 (E.D. Pa. 1988) 20

In re: Thane International, Inc. v. 9472541 Canada Inc.
586 B.R. 540 (Bankr. D. Del. 2018) 19

In re Tidewater Memorial Hospital, Inc.
106 B.R. 876 (Bankr. E.D. Va. 1989) 20

In re University Medical Center
973 F.2d 1065 (3rd Cir. 199) 14

In re Vitalsigns Homecare, Inc.
396 B.R. 232 (Bankr. D. Mass. 2008) 14

Koerpel v. Heckler
797 F.2d 858 (10th Cir. 1986) 16

Lin v. State of California
78 Cal. App. 4th 931 (Ct. App. 2012) 16

Mednik v. State Department of Health Care Services
175 Cal. App. 4th 631 (Ct. App. 2009) 12

Richmond Leasing Co. v. Capital Bank, N.A.
762 F.2d 1303 (5th Cir. 1985) 19

TABLE OF AUTHORITIES
(continued)

Page

Southeast Kansas Community Action Program v. Secretary of Agriculture of the United States
967 F.2d 1452 (10th Cir. 1992) 15

STATUTES

11 U.S.C.
§ 363 ..... 15, 17
§ 363(f) 18, 19
§ 365 ..... *passim*
§ 365(b) 19
§§ 1107(a) and 1108 2

42 U.S.C.
§ 1396a 3
§ 1396a, et seq. 3
§ 1396b 3
§§ 1396b(a) and 1396d(b) (2016) 3
§ 1396b(w) (2017) 4

Cal. Code Regs. Title 22, § 50004(b)(1) (2017) 3

Cal. Welf. & Inst. Code
§ 10740 (West 2017) 3
§ 14016.5(b) (West 2014) 4
§ 14063 (West 2017) 3
§§ 14087.3-14089.8 4
§ 14132 et seq. (West 2014) 4
§ 14169.50 6
§ 14169.50(b) (West 2018) 7
§ 14169.50(d) (West 2014) 7
§§ 14169.50 through 14169.76 6
§ 14169.51(ab) (West 2014) 5
§ 14169.51(*l*) (West 2018) 4
§ 14169.52(a) (West 2014) 6
§ 14169.52(h) 7
§ 14169.53(b) (West 2014) 6
§ 14301.1 (West 2017) 5

TABLE OF AUTHORITIES
(continued)

Page

Federal Medicaid Act 3

Medi-Cal Hospital Reimbursement Improvement Act of 2013 6

Social Security Act Title XIX 3

CONSTITUTIONAL PROVISIONS

Cal. Const., Article 16, § 3.5 6

OTHER AUTHORITIES

42 C.F.R.
§§ 433.50 – 433.74 (2016) 4
§ 433.51 (2010) 3

HTTP://WWW.DHCS.CA.GOV/ 6

http://www.lao.ca.gov/BallotAnalysis/Proposition?number=52&year=2016 4

https://lao.ca.gov/ballot/2013/130602.aspx 5

Minnesota Law Review 341, 344 (1980) 10

INTRODUCTION

California Department of Health Care Services (Department) hereby objects to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May Be Assumed and Assigned (Notice). ECF No. 1704. The Notice and its accompanying exhibits do not list Debtors' Medi-Cal Provider Agreements (Agreements) as executory contracts for St. Francis Medical Center (St. Francis), St. Vincent Medical Center (St. Vincent), Seton Medical Center (Seton), and St. Vincent Dialysis Center (St. Vincent Dialysis) (collectively, Debtors or Hospitals), and the cure amounts for those Medi-Provider Agreements as executory contracts. The Notice's failure to list the Medi-Cal Provider Agreements as executory contracts contradicts the specific terms of the Agreement and the law. If this sale goes through as intended by Debtors, the Department will be precluded from meeting its statutory obligations to collect Hospital Quality Assurance Fees (HQA Fees) and overpayments.

The proposed Asset Purchase Agreement (APA) between Debtors and the Stalking Horse Bidder (Buyer) misrepresents that the Agreements will be transferred as licenses. APA 66, ECF No. 1279. Debtors' Agreements are executory contracts that must be assumed and assigned to the buyer.

For the intended assumption and assignment to occur and given the agreed payment arrangements between the Buyer and Debtors, Debtors must pay all of HQA Fees liabilities for Phase V (to cure by paying all of the HQA Fees in default before the closing of the sale, which is consistent with Debtors' representation in the APA that it would pay all of HQA Fee liabilities for Phases IV and V before the sale closing) in the amount of $79,969,946.80 before the closing of the sale. In addition to the HQA Fee debt, Debtors and/or the Buyer (through joint and several liability) must also reimburse the Department for any Medi-Cal overpayments and pay other debts owed to the Department.

Accordingly, the Notice and its accompanying exhibits must be corrected because they are erroneous. The Agreements should have been included in the Notice and the accompanying exhibits along with the cure amounts for the assumption and assignments of those Agreements.

PROCEDURAL BACKGROUND

On August 31, 2018 (Petition Date), Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. Debtors' cases are jointly administered with their affiliates and, pursuant to 11 U.S.C. §§ 1107(a) and 1108, Debtors continue to operate their businesses and manage their affairs as debtors-in-possession.

On January 17, 2019, Debtors filed the Motion for an order (a) approving form of the APA for the stalking horse bidder and for prospective orders, (b) approving procedures related to the assumption of certain executory contracts and unexpired leases, and (c) to sell their property free and clear of any claims, liens, and encumbrances. Motion, ECF No. 1279.

On March 5, 2019, Debtors filed the Notice and the accompanying exhibits. ECF No. 1704.

FACTUAL BACKGROUND

Debtors filed a copy of the APA on January 17, 2019. ECF No. 1279. Pursuant to Sections 1.7 and 1.7(u) of the APA, the Buyer intends to acquire all of the Hospitals' rights, title, and interests in the Agreements. Along with the intended acquisition of those rights and interests is the Buyer's assumption of any and all obligations, claims, and liabilities under the Agreements. APA 66 and 69, ECF No. 1279.

Further, as set forth in Sections 1.1 and 1.1(d) of the APA, Debtors will pay any HQA Fees owing under Phases IV and V of the HQA Fee Program. APA 61-62, ECF No. 1279.

STATUTORY BACKGROUND

I. ADMINISTRATION OF THE MEDI-CAL PROGRAM

The federal Medicaid Act, enacted in 1965 as title XIX of the Social Security Act, is a federal-state administered Spending Clause program designed to provide medical assistance to eligible low-income individuals. 42 U.S.C. § 1396a & b (2016). The financing and administration of the Medicaid program are a cooperative effort between the federal government and participating states, as authorized under a federally approved State Medicaid Plan. Title 42 U.S.C. § 1396a, et seq., authorizes federal financial support to states for medical assistance provided to certain low-income persons. In California, this program is the California Medical Assistance Program, which is commonly known as Medi-Cal. Cal. Welf. & Inst. Code § 14063 (West 2017). The Department is the single state agency authorized to administer the Medi-Cal program. Cal. Welf. & Inst. Code § 10740 (West 2017); Cal. Code Regs. tit. 22, § 50004(b)(1) (2017).

II. MEDI-CAL FINANCING

The costs of the Medicaid program are generally shared between states and the federal government based on a set formula. 42 U.S.C. §§ 1396b(a) and 1396d(b) (2016). Except for certain covered populations or discrete service expenditures specified in 42 U.S.C. §§ 1396b or 1396d, the federal government reimburses medical assistance expenditures under California's State Medicaid Plan at a rate of 50%. When the Department makes expenditures for medical assistance covered under Medi-Cal, the Department claims the appropriate federal share of those costs at the appropriate federal medical assistance percentage. *Id.*

Federal Medicaid law permits states to finance the non-federal share of Medicaid costs through several sources, including but not limited to:

> State General Funds. State general funds are revenues collected primarily through personal income, sales, and corporate income taxes.

42 C.F.R. § 433.51 (2010).

> Charges on Health Care Providers. Federal Medicaid law permits states to (1) levy various types of charges – including taxes, fees, or assessments – on health care providers and (2) use the proceeds to draw down FFP (federal financial participation) to support the non-federal share of state Medicaid expenditures. These charges must meet certain requirements and be approved by CMS (Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services) for revenues from these charges to be eligible to draw down FFP. A number of different types of providers can be subject to these charges, including hospitals.

42 U.S.C. § 1396b(w) (2017); 42 C.F.R. §§ 433.50 – 433.74 (2016).

The HQA Fee is a charge imposed by the Department on non-exempt hospitals to finance the non-federal share of specified Medi-Cal costs. Cal. Welf. & Inst. Code § 14169.51(*l*) (West 2018). The quarterly HQA Fee imposed upon non-exempt hospitals has been collected by the Department in similar form since 2009. The collected HQA Fees are used to support Medi-Cal expenditures and maximize available federal participation for Medi-Cal costs. *See* http://www.lao.ca.gov/BallotAnalysis/Proposition?number=52&year=2016.

II. DELIVERY OF MEDI-CAL SERVICES

The vast majority of Medi-Cal benefits are delivered through one of two systems: (i) the fee-for-service system and (ii) the managed care plan system. Cal. Welf. & Inst. Code § 14016.5(b) (West 2014). In the fee-for-service system, Medi-Cal contracts with and pays health care providers (such as physicians, hospitals, and clinics) directly for covered services provided to Medi-Cal beneficiaries. *Id.*, § 14132 et seq. (West 2014).

The Department also administers Medi-Cal through various managed care plans operated by public and private entities under contract pursuant to various statutory authorities. *See generally* Cal. Welf. & Inst. Code §§ 14087.3-14089.8; 14200, et. seq. (West 2014). In the managed care system, the Department contracts with managed care plans to provide the vast majority of covered services for enrolled Medi-Cal beneficiaries within a fixed geographic location. *See generally id.* at § 14087.3 et seq. (setting forth standards governing contracts between the

Department and managed care providers) and § 14169.51(ab) (West 2014) (defining "managed health care plan" for purposes of the HQA Fee program). Medi-Cal managed care enrollees may obtain non-emergency services from contracted providers – including hospitals – that accept payments from their health plans. The Department develops and pays an actuarially sound (capitation) rate per Medi-Cal beneficiary enrollee per month to contracted managed care plans. Cal. Welf. & Inst. Code § 14301.1 (West 2017).

III. PAYMENTS TO HOSPITALS FOR MEDI-CAL SERVICES

The Department provides payments to approximately 400 licensed general acute care hospitals. https://lao.ca.gov/ballot/2013/130602.aspx. These hospitals are divided into three general categories (private hospitals, designated public hospitals (county and University of California), and non-designated public hospitals (district hospitals) based on whether the hospital is privately or publicly owned, and who operates the hospital. *Id.* Debtors are private hospitals.

Hospitals may receive several types of payments based on their participation in Medi-Cal, including direct payments from the Department, managed care payments from managed care plans, and supplemental payments from both the Department and managed care plans. https://lao.ca.gov/ballot/2013/130602.aspx.

Direct payments are payments to providers such as Debtor for providing covered services to Medi-Cal beneficiaries through the fee-for-service system. Managed care payments are payments from managed care plans to providers (including hospitals such as Debtor) for services delivered to Medi-Cal beneficiaries enrolled in these plans. The plans receive funds from the Department to pay the providers. https://lao.ca.gov/ballot/2013/130602.aspx.

Quality assurance payments are supplemental payments, supported by the HQA Fee revenue and federal matching funds, providing additional payments to Medi-Cal hospitals to supplement the Department's direct fee-for service payments

and the managed care plans' payments to hospitals, including Debtor. Cal. Welf. & Inst. Code § 14169.53(b) (West 2014).

IV. HOSPITAL QUALITY ASSURANCE FEE

California Assembly Bill 1383 established a program that imposed a quarterly HQA Fee to be paid by non-exempt hospitals, which would be used to increase federal financial participation in order to make supplemental payments to hospitals including private hospitals (such as Debtors), and to help pay for health care coverage for low-income children, for the period of April 1, 2009 through December 31, 2010. The California Legislature extended the HQA Fee program through December 31, 2016. Then, on November 8, 2016, California voters passed Proposition 52 continuing the HQA Fee program indefinitely from January 1, 2017, onward. *See* Cal. Const., art 16, § 3.5; HTTP://WWW.DHCS.CA.GOV/PROVGOVPART/PAGES/HOSPITALQUALITYASSURANCEFEEPROGRAM.ASPX.

More specifically, the Medi-Cal Hospital Reimbursement Improvement Act of 2013 (the Act) extended the imposition of the HQA Fee from January 1, 2014, through December 31, 2016. The Act was signed into law in October 2013 and is codified at California Welfare and Institutions Code sections 14169.50 through 14169.76. It was later made permanent pursuant to Proposition 52. Cal. Const., art 16, § 3.5. The Act requires non-exempt hospitals to pay a quarterly HQA Fee, which is assessed regardless of a hospital's participation in the Medi-Cal program. Cal. Welf. & Inst. Code § 14169.52(a) (West 2014).

V. STATUTORY BASIS FOR COLLECTION OF HQA FEES

California Welfare and Institutions Code section 14169.50 sets forth the legislative purpose and intent for the HQA Fee program. "It is the intent of the Legislature that funding provided to hospitals through a hospital quality assurance fee be continued with the goal of increasing access to care and to improving

hospital reimbursement through supplemental Medi-Cal payments to hospitals." Cal. Welf. & Inst. Code § 14169.50(b) (West 2018). "It is [also] the intent of the Legislature to impose a quality assurance fee to be paid by hospitals, which would be used to increase federal financial participation in order to make supplemental Medi-Cal payments to hospitals, and to help pay for health care coverage for low-income children." Cal. Welf. & Inst. Code § 14169.50(d) (West 2014) (emphasis added). California Welfare and Institutions Code section 14169.52(h) provides the Department with the statutory remedy to recover the unpaid HQA Fee debt from Medi-Cal payments until the entire debt is recovered (recoupment).

FACTUAL BACKGROUND

I. ST. VINCENT MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL

St. Vincent Medical Center, as of March 15, 2019, has HQA Fee liabilities for Phase V in the amount of **$21,427,707.82.**

ST. VINCENT MEDICAL CENTER (NPI# 1124004304) (OSHPD# 106190762)					
PHASE V		AMOUNT DUE	DUE DATE	WITHHELD	OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)				
2017/18	MANAGED CARE 2 (Directed) (07/01/2017-06/30/2018)	$2,575,439.74	TBD	$0.00	$2,575,439.74
2018/19	CYCLE 7 (07/01/2018 - 09/30/2018)	$3,433,071.00	10/3/2018	$537,551.92	$2,895,519.08
	CYCLE 8 (10/01/2018-12/31/2018)	$3,433,071.00	1/2/2019	$0.00	$3,433,071.00
	CYCLE 9 (01/01/2019-03/31/2019)	$3,433,071.00	4/3/2019	$0.00	$3,433,071.00
	CYCLE 10 (04/01/2019-06/30/2019)	$3,433,071.00	7/3/2019	$0.00	$3,433,071.00
	MANAGED CARE 3 (Passthrough) (07/01/2018-06/30/2019)	$2,828,768.00	TBD	$0.00	$2,828,768.00
	MANAGED CARE 3 (Directed) (07/01/2018-06/30/2019)	$2,828,768.00	TBD	$0.00	$2,828,768.00

Total Outstanding Balance	$21,427,707.82

II. SETON MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL

Seton Medical Center, as of March 15, 2019, has outstanding HQA Fee liabilities for Phase V in the amount of **$28,160,469.45**, as shown below:

SETON MEDICAL CENTER (NPI# 1154428688) (OSHPD# 106410817)					
PHASE V		AMOUNT DUE	DUE DATE	WITHHELD	OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)				
2016/17	CYCLE 1 (01/01/2017 – 03/31/2017)	$2,040,467.00	2/5/2018	$0.00	$2,023,405.60
	CYCLE 2 (04/01/2017 – 06/30/2017)	$2,040,467.00	2/28/2018	$0.00	$2,040,467.00
2016/17	MANAGED CARE 1 (Passthrough) (01/01/2017-06/30/2017)	$1,870,925.10	3/13/2019	$1,870,925.10	$1,758,838.00
2017/18	CYCLE 3 (07/01/2017 - 09/30/2017)	$2,223,369.00	3/21/2019	$0.00	$2,223,369.00
	CYCLE 4 (10/01/2017 - 12/31/2017)	$2,223,368.94	4/11/2018	$0.00	$2,223,368.94
	CYCLE 5 (01/01/2018 - 03/31/2018)	$2,223,369.00	5/2/2018	$0.00	$2,223,369.00
	CYCLE 6 (04/01/2018 – 06/30/2018)	$2,223,369.00	7/11/2018	$0.00	$2,223,369.00
	MANAGED CARE 2 (Passthrough) (07/01/2017 – 06/30/2018	$1,893,251.67	3/13/2019	$1,893,251.67	$0.00
	MANAGED CARE 2 (Directed) (07/01/2017 – 06/30/2018	$1,903,985.91	TBD	$0.00	$1,903,985.91
2018/19	CYCLE 7 (07/01/2018 - 09/30/2018)	$2,293,835.00	10/3/2018	$0.00	$2,293,835.00

	CYCLE 8 (10/01/2018 - 12/31/2018)	$2,293,835.00	1/2/2019	$0.00	$2,293,835.00
	CYCLE 9 (01/01/2019- 03/31/2019)	$2,293,835.00	4/3/2019	$0.00	$2,293,835.00
	CYCLE 10 (04/01/2019- 06/30/2019)	$2,293,835.00	7/3/2019	$0.00	$2,293,835.00
	MANAGED CARE 3 (Passthrough) (07/01/2018- 06/30/2019)	$2,061,897.50	TBD	$0.00	$2,061,897.50
	MANAGED CARE 3 (Directed) (07/01/2018- 06/30/2019)	$2,061,897.50	TBD	$0.00	$2,061,897.50
Total Outstanding Balance					**$28,160,469.45**

III. ST. FRANCIS MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL

St. Francis Medical Center, as of March 15, 2019, has HQA Fee liabilities for Phase V in the amount of **$30,381,769.53**.

ST. FRANCIS MEDICAL CENTER (NPI# 1487697215) (OSHPD# 106190754)					
PHASE V		**AMOUNT DUE**	**DUE DATE**	**WITHHELD**	**OUTSTANDING BALANCE**
FISCAL YEAR	**CYCLE (PERIOD)**				
2017/18	**MANAGED CARE 2** (Directed) (07/01/2017- 06/30/2018)	$5,354,709.53	TBD	$0.00	$5,354,709.53
2018/19	**CYCLE 9** (01/01/2019 - 03/31/2019)	$6,703,466.00	4/3/2019	$0.00	$6,703,466.00
	CYCLE 10 (04/01/2019- 06/30/2019)	$6,703,466.00	7/3/2019	$0.00	$6,703,466.00
	MANAGED CARE 3 (Passthrough) (07/01/2018- 06/30/2019)	$5,810,064.00	TBD	$0.00	$5,810,064.00
	MANAGED CARE 3 (Directed) (07/01/2018- 06/30/2019)	$5,810,064.00	TBD	$0.00	$5,810,064.00
Total Outstanding Balance					**$30,381,769.53**

///

IV. ST. VINCENT DIALYSIS CENTER

St. Vincent Dialysis has an existing overpayment debt of $372.52, which must be reimbursed to the Department.

OVERPAYMENTS DEBT SUMMARY (UPDATED 01/23/2019)

Provider	NPI	Outstanding Balance
St. Vincent Dialysis Center	1992700314	$375.52

V. DEBTORS CONTINUE AS MEDI-CAL PROVIDERS POST PETITION

Since the Petition Date, Debtors have continued to provide Medi-Cal services, have continued to submit claims to Medi-Cal for payment, and have continued to receive Medi-Cal payments. In other words, despite their bankruptcy filings, Debtors have remained in the Medi-Cal system, enjoying Medi-Cal provider benefits, such as direct payments from the Department, managed care payments from managed care plans, and supplemental payments from both the Department and managed care plans.

ARGUMENT

I. MEDI-CAL AGREEMENTS ARE EXECUTORY CONTRACTS

Contrary to the representations in the proposed APA, the Agreements cannot be transferred as licenses. They must be assumed and assigned as executory contracts.

The Bankruptcy Code does not define the term "executory contract"; however, the legislative history of 11 U.S.C. § 365 leaves no doubt that an executory contract is one "in which neither side has fully performed at the commencement of bankruptcy." *In re Monsour Medical Center*, 8 B.R. 606, 612 (Bankr. W.D. Pa. 1981), aff'd 11 B.R. 1014 (W.D. Pa. 1981) (citing Fogel, *Executory Contracts and Unexpired Leases in the Bankruptcy Code*, 64 Minnesota Law Review 341, 344 (1980). The legislative history provides:

> Though there is no precise definition of what contracts are executory, it generally includes contracts on which performance remains due to some extent on both sides. A note is not usually an executory contract if the only performance that remains is repayment. Performance on one

side of the contract would have been completed and the contract is no longer executory.

Id.

This interpretation of the term "executory contract" is in accord with the view adopted by commentary and case law discussing Section 70(b) of the former Bankruptcy Act, the provision from which 11 U.S.C. § 365 is derived, that an executory contract is one "under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other." *In re Monsour Medical Center*, 8 B.R. at 612-613 (citing Countryman, *Executory Contracts in Bankruptcy: Part 1*, 57 Minn. L. Rev. 439, 460 (1973); *Chattanooga Mem. Park v. Still*, 574 F.2d 349, 352 (6th Cir.), cert. denied, 439 U.S. 929, 99 S. Ct. 316, 58 L. Ed. 2d 322 (1978).) In other words, executory contracts include contracts where, to some extent, performance remains due from both parties. *In re Holland Enterprises, Inc.* (*In re Holland*), 25 B.R. 301 (Bankr. E.D. N.C. 1982) (citing *In re Rovine Corp.*, 5 B.R. 402, 404 (W.D. Tenn. 1980).

To become entitled to receive Medi-Cal payments as Medi-Cal providers, Debtors were required to enter into Agreements with the Department. *In re Gardens Regional Hospital and Medical Center, Inc.* (*In re Gardens*), 569 B.R. 788, 792 (Bankr. C.D. Cal. 2017). Debtors' eligibility to participate in the Medi-Cal program is conditioned upon its consent to the terms of these Agreements. *In re Gardens*, 569 B.R. at 796-97. In that regard, the Agreements specifically emphasize:

> **AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE.**

Declaration of Hanh Vo (Vo Decl.), Exs. 1 – 4, at 1 (original emphasis).

Debtors have alleged that Medicare and Medicaid provider agreements are not contracts because there was no consideration by the parties to the agreements. In that regard, Debtors erroneously allege that the provider agreements: (1) merely informs the provider to applicable rules and statutes, which it has a preexisting legal duty to do so, (2) provides no benefits to Medicare or Medi-Cal, and (3) imposes no duties on Medicare or Medi-Cal other than to follow existing statutes and regulations.

When Debtors contracted with the Department to participate in Medi-Cal, they agreed to not only comply with applicable law governing Medi-Cal providers, but also agreed to explicit payment and reimbursement terms that are expressly set forth in the Agreements. Debtors' voluntary consent to those contractual provisions is consideration for the Department to contract with Debtors, allowing Debtors to participate in the Medi-Cal system and receive payments in the millions to tens of millions of dollars. As a governmental entity, the Department and Medi-Cal are guided by public policy considerations when contracting with providers to provide medical treatment and services to Medi-Cal beneficiaries. *In re Gardens Regional Hospital and Medical Center, Inc.*, 2018 WL 1354334 *6. As affirmed by the California Court of Appeal, the relationship between a Medi-Cal provider and the Department is contractual in nature. *Mednik v. State Department of Health Care Services* 175 Cal. App. 4th 631, 642 (Ct. App. 2009).

The parties' consideration for the Agreements is indisputably exemplified by the following terms and conditions specified in the Agreements:

(1) Debtors must comply with all applicable state law and be subject to all sanctions available to the Department, if they fail to do so. Vo Decl., Ex. 5, ¶ 2, at 1.

(2) Debtors cannot submit any treatment authorization requests or claims to the Department using a National Provider Identifier (NPI) unless that NPI is appropriately registered to Debtors and is in compliance with all NPI requirements. *Id.*, ¶ 3, at 2.

(3) Debtors cannot engage in any conduct inimical to the public health, morals, welfare, and safety of any Medi-Cal beneficiary, or to the fiscal integrity of the Medi-Cal system." *Id.*, ¶ 4, at 2.

(4) Debtors cannot "exclude or deny aid, care, service, or other benefits available under Medi-Cal or in any other way discriminate against any Medi-Cal patients because of that person's race, color, ancestry, marital status, national origin, gender, age, economic status, physical or mental disability . . . ." *Id.*, ¶ 5, at 2.

(5) Health care services provided by Debtors must be by qualified personnel for conditions that cause "suffering, endanger life, result in illness or infirmity, interfere with capacity for normal activity, including employment, or for conditions which may develop into some significant handicap or disability." *Id.*, ¶ 6, at 2.

(6) Any overpayment must be repaid by Debtors in accordance with applicable federal and California statutes, regulations, and rules and policies of the Department, and the Department may recoup any overpayment from monies otherwise payable to Provider under the Agreement. *Id.*, ¶ 23, at 4.

(7) Debtors are subject to certain automatic and permissive suspensions and mandatory and permissive exclusions. *Id.*, ¶ 25, at 4.

Given the continuing nature of the duties imposed upon Debtors and the Department by both the Agreement and applicable law, Debtors' Agreements are executory contracts. Under the Agreements, Debtors must continue to comply with the express terms of the Agreement with regard to providing care to Medi-Cal beneficiaries and for conducting themselves as Medi-Cal providers, in order to avoid breaching the Agreement and remain in the Medi-Cal system as an authorized provider. Moreover, as the First Circuit found for Medicare provider agreements, Debtors' respective Agreement constitutes a single, ongoing, and integrated transaction. *In re Holyoke Nursing Home, Inc.*, 372 F.3d 1, 5 (1st Cir. 2004).

II. CASE LAW AFFIRMS THAT THE AGREEMENTS ARE EXECUTORY CONTRACTS

The Agreements are similar in many respects to the Medicare Provider Agreement. *In re Gardens*, 569 B.R. at 799 n.12. "A majority of bankruptcy courts considering the Medicare-provider relationship conclude that the Medicare

provider agreement, with its attendant benefits and burdens, is an executory contract." *In re Vitalsigns Homecare, Inc.*, 396 B.R. 232, 239 (Bankr. D. Mass. 2008) (citing *In re University Medical Center*, 973 F.2d 1065, 1075 and n.13 (3rd Cir. 199). "The [Medicare] Provider Agreement is a unique type of contract." *In re University Medical Center*, 973 F.2d at 1081 (quoting *University Medical Center*, 122 B.R. 919, 930 (E.D. Pa. 1990)). "The Medicare Provider Agreement is a contract providing for advance payments based on estimates and expressly permitting the withholding of overpayments from future advances." *In re Hefferman Memorial Hospital District*, 192 B.R. 228, 231 n.4 (S.D. Cal. 1996). "Medicare provider agreements are executory in nature, calling for future performance by both parties until either party requests termination, and thus are subject to § 365." *University Medical Center*, 122 B.R. at 919.

Case law consistently holds that a Medicare provider agreement easily fits within this definition of executory contract. *In re Slater Health Center, Inc.*, 294 B.R. 423, 432 (Bankr. D. RI. 2003) (citing *In re University Medical Center*, 973 F.2d at 1075.) A Medicare provider agreement is an executory contract. *In re Hefferman Memorial Hospital District*, 192 B.R. at 231 n.4. Most courts have concluded that a provider agreement is an executory contract subject to assumption or rejection by a debtor-in-possession. [Internal citations omitted.]" *In re St. Johns Home Health Agency Co.*, 173 B.R. 238, 242 n.1 (S.D. Fl. 1994).

> As we conclude that Congress contemplated that the Medicare provider agreements would constitute a single, ongoing, and integrated transaction, the equitable powers of the bankruptcy court do not entitle it to second-guess Congress's implicit policy choices. *Both by statute and by contract* [emphasis added], the HCFA [Health Care Financing Administration] has the unqualified right to recoup those overpayments *in full* [original emphasis], and to return the funds to the public fisc, where they can be used to fund other facilities providing care to Medicare beneficiaries.

In re Holyoke Nursing Home, Inc., 372 F.3d at 5.

In re Monsour Medical Center involved the determination of the Medicare contractual relationship between a medical center and the government. The

bankruptcy court found that the medical center and the government were parties to two executory contracts as of the date of the filing of the petition and approved the medical center's assumption of the executory contracts. *In re Memorial Hosp. of Iowa County, Inc.*, 82 B.R. 478, 482-483 (W. D. Wis. 1988) (explaining *In re Monsour Medical Center*).

In *In re Hefferman*, the bankruptcy court of the Southern District of California stressed:

> The Medicare Provider Agreement is a contract, providing for advance payments based on estimates and expressly permitting the withholding of overpayments from future advances. Most recoupment cases involve the *type of contract involved in this case* . . . .

In re Hefferman Memorial Hospital District, 192 B.R. at 231 n.4 (emphasis added).

Accordingly, given that courts have consistently held that Medicare Provider Agreements are executory contracts, Medi-Cal Provider Agreements are also executory contracts as the two agreements are similar in many respects. *In re Gardens Regional Hospital and Medical Center, Inc.*, 569 B.R. at 800, n.12.

III. THE AGREEMENTS CANNOT BE SOLD FREE AND CLEAR OF DEBT OWED TO MEDI-CAL UNDER 11 U.S.C. § 363

The Agreements cannot be sold by Debtors as assets free and clear of any liabilities, obligations, and claims.

The Ninth Circuit and other circuits have firmly held that providers are not entitled to continued participation in the Medicare and Medicaid programs (including Medi-Cal). Accordingly, the providers have no statutory entitlement to continue to bill Medi-Cal. They lack a protectable property interest to do so.

If a benefit is a "matter of statutory entitlement for persons qualified to receive them," a property interest in that benefit is created. *Goldberg v. Kelly*, 397 U.S. 254, 262, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). Property interest arises from a statutory entitlement. *Southeast Kansas Community Action Program v. Secretary of Agriculture of the United States*, 967 F.2d 1452, 1457 (10th Cir. 1992).

Food-stamp benefits are a matter of statutory entitlement for persons qualified to receive them, and thus are appropriately treated as a form of "property." *Atkin v. Parker*, 472 U.S. 115, 128, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985). Statutory entitlement of eligible veterans to receipt of educational assistance constitute a property interest. *Devine v. Cleland*, 616 F. 2d 1080, 1086 (9th Cir. 1980). A state issued license for the continued pursuit of the licensee's livelihood creates a property interest. *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).

The Tenth Circuit held that a Medicare provider such as a physician had no property interest in his eligibility for Medicare reimbursement. A provider is not the intended beneficiary of the Medicare program; thus, the provider has no protectable property interest in the Medicare program. *Koerpel v. Heckler*, 797 F.2d 858, 863-65 (10th Cir. 1986). Similarly, the First Circuit concluded that a provider has no protectable property interest in his participation in Medicare. *Cervoni v. Secretary of Health, Education and Welfare*, 581 F.2d 1010 (1st Cir. 1978).

In *Erickson v. United States Department of Health and Human Services*, the district court granted an injunction to plaintiffs, Medicare providers, to prohibit the Secretary of Health and Human Services from excluding them from federally-funded health care programs. On appeal, the Ninth Circuit followed the reasoning of the First and Tenth Circuits in *Koerpel* and *Cervoni* and held that plaintiffs were not entitled to the continued participation in Medicare/Medicaid programs. Plaintiffs failed to show entitlement, including statutory entitlement, for continued participation in those programs; therefore, they have no property interest in continued participation in those programs. *Erickson v. United States Department of Health and Human Services*, 67 F. 3d 858, 862 (9th Cir. 1995). Similarly, the California Court of Appeal in *Lin v. State of California*, 78 Cal. App. 4th 931 (Ct. App. 2012) held that providers of Medicare and Medicaid services have no

protected interests in continued participation in those programs. *Id.*, at 935. Accordingly, Debtors' do not have any statutory entitlement to bill Medi-Cal. Instead, their ability to retain their Medi-Cal provider status and to provide Medi-Cal services and bill for those services, depends upon their ongoing fulfilment of duties and obligations required by the Agreements.

Consistent with the Ninth Circuit holding that providers have no property interests in their continued participation in Medicare or Medicaid, a bankruptcy court specifically declared that a Medicare Provider Agreement, and similarly, the Medi-Cal Provider Agreement, cannot be sold as an asset under 11 U.S.C. § 363, free and clear of any debt.

> Notwithstanding . . . anything in the Motion or Purchase Agreement to the contrary, *the Medicare Provider Agreement shall not be considered an "asset" that may be sold pursuant to section 363 of the Bankruptcy Code and shall be treated as an executory contract subject to the Assumption and Assignment Procedures*. Assumption and assignment of the Medicare Provider Agreement shall require, as a cure, successor liability on the part of the Buyer for liabilities under the Medicare Provider Agreement.

In re Berks Behavioral Health, LLC, 2010 WL 4922173, 7 (Bankr. E.D. Pa. 2010) (emphasis added).

Consistent with the First, Ninth, and Tenth Circuits as well as the California Court of Appeal, Debtors' Agreements explicitly assert that no property interests exist in or to the providers' status (such that they can be sold as an asset under 11 U.S.C. § 363). Instead, the Agreements expressly state that any rights or obligations associated with the Agreements, as executory contracts, may only be assigned and assumed with successor liability.

> Provider agrees that it has no property right in or to its status as a Provider in the Medi-Cal program or in or to the provider number(s) assigned to it, and that Provider may not assign its provider number for use as a Medi-Cal provider, or any rights or obligations it has under [the] Agreement, *except to the extent purchasing owner is joining this provider agreement with successor joint and several liability.*"

Vo Decl., Ex 5, ¶ 37, at 8, (emphasis added).

Aside from the fact that Debtors have no property interests to continue to participate in the Medi-Cal system, 11 U.S.C. § 363(f) does not allow Debtors to sell their Agreements free and clear of any debt or successor liability. Under 11 U.S.C. § 363(f), property can be sold free and clear of any interest in that property of an entity other than the estate, only if:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or
> (5) such entity can be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Here, none of the above requisite elements of 11 U.S.C. § 363(f) apply. For the first criteria, as shown above, non-bankruptcy law does not permit sale of Debtors' Agreements as assets, free and clear of any debt. The Ninth Circuit specifically held that providers have no property interest in their continued participation in Medi-Cal. Accordingly, the Agreements make clear that Debtors have no property rights in or to their status as Medi-Cal Providers. Rather than being assets that can be sold, the Agreements and any rights and obligations therein can only be assigned with successor liability. Vo Decl., Exs. 4, ¶ 36, at 8.

With regard to second and third criteria, they are inapplicable because the Department has not consented to the sale of the Agreements as Debtor's assets or property and no lien interests are involved here.

For the fourth criteria, there is no bona dispute regarding the assumption and assignment of the Agreements with successor liability. "A bona fide dispute exists when there is an objective basis for either factual or legal dispute as to the validity of an interest in property." *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). As shown above, both the Debtors and the Buyer know and

acknowledge in the APA that the Agreements can only be assumed and assigned with the Department's agreement. APA, Ex. A, § 8.8, ECF No. 365-1.

For the fifth criteria, the Department cannot be compelled to accept a money satisfaction in exchange for its rights to prevent a sale of Debtors' Medi-Cal provider status or Debtors' benefits, duties and obligations under the Agreements.

Accordingly, Debtors cannot sell their Medi-Cal Provider Agreements, free and clear of any debt under 11 U.S.C. § 363(f). The Agreements can only be assumed and assigned with successor liability. As such, Debtors must cure by paying the HQA Fees in default.

IV. THE AGREEMENTS, AS EXECUTORY CONTRACTS, REQUIRE CURE OF DEFAULTS AND DEBTS

It is well settled that curing all defaults is an essential pre-condition to assumption of a contract under 11 U.S.C. § 365(b). "Cure is a critical component of assumption." *In re: Thane International, Inc. v. 9472541 Canada Inc.*, 586 B.R. 540, 549 (Bankr. D. Del. 2018). When an executory contract is assumed, valid claims for default must be cured by the debtor. *In re Memorial Hospital of Iowa County, Inc.*, 82 B.R. 478, 481 (Bankr. W.D. Wis. 1988).

Accordingly, all existing HQA Fees debt – HQA Fees in default – must be paid by Debtors before closing of the sale.

V. DEBTORS' AGREEMENTS REQUIRE SUCCESSOR LIABILITY BY THE BUYER

A party must accept the contract as a whole, meaning that a party cannot choose to accept the benefits of the contract and reject its burdens to the detriment of the other party to the agreement. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985) (citing *In re Holland*, 25 B.R. 301). It is axiomatic that an assumed contract under 11 U.S.C. § 365 is accompanied by its provisions and conditions. *In re Holland*, 25 B.R. at 303 (citing *Atchison, Topeka & Santa Fe Ry Co. v. Hurley*, 153 F. 403 (8th Cir. 1907), aff'd 213 U.S. 126, 29 S.

Ct. 466, 53 L. Ed. 729 (1909)). "Assumption or rejection of an executory contract requires an all-or-nothing commitment going forward, and then a debtor cannot assume part of an executory contract in the future while rejecting another part." *In re St. Mary Hospital*, 89 B.R. 503, 509 (E.D. Pa. 1988).

An executory contract must be assumed or rejected *in toto*. *In re Holland*, 25 B.R. at 303. "To hold otherwise, would construe the bankruptcy law as providing a debtor in bankruptcy with greater rights and powers under a contract than the debtor had outside the bankruptcy." *Id.* (citing *In re Nashville White Trucks, Inc.*, 5 B.R. 112, 117 (Bankr. M.D. Tenn.)).

> The Court remains cognizant of the legislative purpose behind section 365. This provision vests the bankruptcy court with a unique power designed to facilitate the rehabilitation of debtors. Nevertheless, a debtor may not retreat to this provision, derived from the inherent equitable powers of the bankruptcy courts, to avoid an obligation while it enjoys a benefit which arises in conjunction with that obligation.

In re Holland, 25 B.R. at 303.

Accordingly, if the Buyer assumes the Agreements, then the Buyer will be held jointly and severally liable for any debt owed by Debtors to the Department, including HQA Fees and any Medi-Cal overpayments to Debtors, as Debtors' Agreements specifically mandate. In addition, under the Agreements, the Buyer will be subject to Department's recoupment for any unpaid HQA Fees and Medi-Cal overpayments owed by Debtors. 11 U.S.C. § 365. "It is hornbook law that a debtor cannot assume the benefits of an executory contract while rejecting the burdens." *In re Tidewater Memorial Hospital, Inc.*, 106 B.R. 876, 884 n.9 (Bankr. E.D. Va. 1989).

If Debtors are allowed to sell, transfer, and assign the Agreements, as licenses, then Debtors and the Buyer would be allowed to divorce the benefits from the burdens of the Agreements and undermine the HQA Fee system. They would receive the benefits of Debtors' Agreements including Medi-Cal service payments and quality assurance payments, while disregarding the obligations of the same

Agreements, including successor liability for any HQA Fee debt and other debts incurred by Debtors to the Department. The Court should not permit such a result.

CONCLUSION

For the foregoing reasons, the Notice and its accompanying exhibits are erroneous. The Agreements are executory contracts that can only be assumed and assigned. To satisfy this pre-condition to assumption and assignment, Debtors must cure by paying the HQA Fees in default and the Buyer assume any and all obligations and liabilities under the Agreements with joint and several liability. The Agreements cannot be sold by Debtors to the Buyer free and clear of all liabilities, claims, and obligations.

Dated: March 22, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General

/s/ Kenneth K. Wang
KENNETH K. WANG
Deputy Attorney General
Attorneys for Creditor
Department of Health Care Services

LA2018602105
Verity - DHCS's Objection (FINAL 3-22-19).docx

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: California Office of the Attorney General, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

A true and correct copy of the foregoing document entitled:

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 (ECF NO. 1704)

DECLARATION OF HANH VO IN SUPPORT OF 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 (ECF NO. 1704)

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**:

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **March 22, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Lance N Jurich ljurich@loeb.com
David E Lemke david.lemke@wallerlaw.com
Bryan L Ngo bngo@fortislaw.com
Mary H Haas maryhaas@dwt.com
Mark A Neubauer mneubauer@carltonfields.com
Latonia Williams lwilliams@goodwin.com
Latonia Williams lwilliams@goodwin.com
Alicia K Berry Alicia.Berry@doj.ca.gov
Hutchison B Meltzer hutchison.meltzer@doj.ca.gov
Julie H Rome-Banks julie@bindermalter.com
Eric J Fromme efromme@tocounsel.com

Adam G Wentland awentland@tocounsel.com
Keith Patrick Banner kbanner@greenbergglusker.com

Brian L Davidoff bdavidoff@greenbergglusker.com
Eric J Fromme efromme@tocounsel.com
Adam G Wentland awentland@tocounsel.com
Kyrsten Skogstad kskogstad@calnurses.org
Michael B Reynolds mreynolds@swlaw.com
Debra Riley driley@allenmatkins.com
Elizabeth Berke-Dreyfuss edreyfuss@wendel.com
William M Rathbone wrathbone@grsm.com
Jeffrey C Wisler jwisler@connollygallagher.com
Rose Zimmerman rzimmerman@dalycity.org
Peter J Benvenutti pbenvenutti@kellerbenvenutti.com
Jane Kim jkim@kellerbenvenutti.com
Gregory R Jones gjones@mwe.com
Kyra E Andrassy kandrassy@swelawfirm.com
Stephen F Biegenzahn efile@sfblaw.com
Karl E Block kblock@loeb.com
Shawn M Christianson cmcintire@buchalter.com
Andy J Epstein taxcpaesq@gmail.com
Michael G Fletcher mfletcher@frandzel.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Lawrence B Gill lgill@nelsonhardiman.com
Gary E Klausner gek@lnbyb.com
Craig G Margulies Craig@MarguliesFaithlaw.com
Monserrat Morales mmorales@marguliesfaithlaw.com
Kevin H Morse kevin.morse@saul.com
Alan I Nahmias anahmias@mbnlawyers.com
Mark A Neubauer mneubauer@carltonfields.com
Abigail V O'Brient avobrient@mintz.com
Mark D Plevin mplevin@crowell.com
David M Poitras dpoitras@wedgewood-inc.com
Michael B Reynolds mreynolds@swlaw.com
Mary H Rose mrose@buchalter.com
Megan A Rowe mrowe@dsrhealthlaw.com
Rosa A Shirley rshirley@nelsonhardiman.com
Andrew Still astill@swlaw.com
Gary F Torrell gft@vrmlaw.com
Jason Wallach jwallach@ghplaw.com
Gerrick Warrington gwarrington@frandzel.com
Steven T Gubner sgubner@bg.law

Phillip K Wang phillip.wang@rimonlaw.com
Elan S Levey elan.levey@usdoj.gov
John Mark Jennings johnmark.jennings@kutakrock.com
Lisa M Peters lisa.peters@kutakrock.com
Marilyn Klinger MKlinger@smtdlaw.com
Cristina E Bautista cristina.bautista@kattenlaw.com
Marsha A Houston mhouston@reedsmith.com
Michael D Breslauer mbreslauer@swsslaw.com
Christopher J Petersen cjpetersen@blankrome.com
Mariam Danielyan md@danielyanlawoffice.com
Ivan L Kallick ikallick@manatt.com
Paul R. Glassman pglassman@sycr.com
Kyra E Andrassy kandrassy@swelawfirm.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Michael S Held mheld@jw.com
Michael St James ecf@stjames-law.com
M Douglas Flahaut flahaut.douglas@arentfox.com
Robert M Hirsh Robert.Hirsh@arentfox.com
Aram Ordubegian ordubegian.aram@arentfox.com
Sabrina L Streusand Streusand@slollp.com
Alan I Nahmias anahmias@mbnlawyers.com
Florice Hoffman fhoffman@socal.rr.com
Rosa A Shirley rshirley@nelsonhardiman.com
Ralph J Swanson ralph.swanson@berliner.com
Chris D. Kuhner c.kuhner@kornfieldlaw.com
James Cornell Behrens jbehrens@milbank.com
Jennifer L Nassiri jennifernassiri@quinnemanuel.com
Eric D Goldberg eric.goldberg@dlapiper.com
Monique D Jewett-Brewster mjb@hopkinscarley.com
Damarr M Butler butler.damarr@pbgc.gov
Lori A Butler butler.lori@pbgc.gov
Melissa T Ngo ngo.melissa@pbgc.gov
Marianne S Mortimer mmortimer@sycr.com
Sara Chenetz schenetz@perkinscoie.com
Simon Aron saron@wrslawyers.com
Richard A Lapping richard@lappinglegal.com
Mark A Serlin ms@swllplaw.com
Stephen F Biegenzahn efile@sfblaw.com
Paul J Laurinplaurin@btlaw.com

Ron Bender rb@lnbyb.com
Monica Y Kim myk@lnbrb.com
Emily P Rich erich@unioncounsel.net
Neal L Wolf nwolf@hansonbridgett.com
Steven G. Polard spolard@ch-law.com
David N Crapo dcrapo@gibbonslaw.com
Kevin M Eckhardt keckhardt@huntonak.com
Brian D Huben hubenb@ballardspahr.com
Latonia Williams lwilliams@goodwin.com
Mark A Neubauer mneubauer@carltonfields.com
Matthew S Walker matthew.walker@pillsburylaw.com
Lori L Purkey bareham@purkeyandassociates.com
Robert N Amkraut ramkraut@foxrothschild.com
Nathan A Schultz nschultz@foxrothschild.com
Darryl S Laddin bkrfilings@agg.com
Howard Camhi hcamhi@ecjlaw.com
John R OKeefe, Jr jokeefe@metzlewis.com
Paul J Pascuzzi ppascuzzi@ffwplaw.com
Jason D Strabo jstrabo@mwe.com
Aaron Davis aaron.davis@bryancave.com
Andrew J Ziaja aziaja@leonardcarder.com
Joseph A Kohanski jkohanski@bushgottlieb.com
Seth B Shapiro seth.shapiro@usdoj.gov
Alvin Mar alvin.mar@usdoj.gov
Hatty K Yip hatty.yip@usdoj.gov
Scott E Blakeley seb@blakeleyllp.com
Samuel R Maizel samuel.maizel@dentons.com
John A Moe, II john.moe@dentons.com
Tania M Moyron tania.moyron@dentons.com
Bruce Bennett bbennett@jonesday.com
Bruce Bennett bbennett@jonesday.com
Dustin P Branch branchd@ballardspahr.com
Matthew S Walker matthew.walker@pillsburylaw.com
Charles E Nelson nelsonc@ballardspahr.com
Michael Hogue hoguem@gtlaw.com
Thomas J Polis tom@polis-law.com
Lior Katz katzlawapc@gmail.com

2. SERVED BY UNITED STATES MAIL:

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **March 22, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

Melissa W Jones
Waller Lansden Dortch & Davis, LLP
511 Union St., Suite 2700
Nashville, TN 37219

Scott Schoeffel
THEODORA ORINGHER PC
535 Anton Boulevard, Ninth Floor
Costa Mesa, CA 92626-7109

James Kapp
444 West Lake St Ste. 4000
Chicago, IL 60606-0029

Shawn C Groff
1330 Broadway Suite 1450
Oakland, CA 94612

Mollie Simons
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

Brent F Basilico
Sellar Hazard & Lucia
201 North Civic Dr., Ste. 145
Walnut Creek, CA 94596

Steven M Berman
101 E Kennedy Blvd., Ste. 2800
Tampa, FL 33602
Rachel C Quimby
Daglian Law Group APLC
701 N Brand Blvd Ste 610

Glendale, CA 91203

Phillip G Vermont
Randick O'Dea & Tooliatos LLP
5000 Hopyard Rd., Ste 225
Pleasanton, CA 94588

Margaret M Anderson
Fox Swibel Levin & Carroll LLP
200 West Madison St
Chicago, IL 60606

Ryan Schultz
Fox Swibel Levin & Carroll LLP
200 W. Madison Street
Suite 3000
Chicago, IL 60606

Schuyler Carroll
PERKINS COIE, LLP
30 ROCKEFELLER PLZ FL 22,
New York, New York 10111

Donald R Kirk
Carlton Fields
4221 W Boy Scout Blvd Ste 1000
Tampa, FL 33607

John Ryan Yant
Carlton Fields Jorden Burt, P.A.
4221 W Boy Scout Blvd, Ste. 1000
Tampa, FL 33607

John R O'Keefe, Jr.
Metz Lewis Brodman Must O'Keefe LLC
535 Smithfield St Ste 800
Pittsburgh, PA 15222
Nathan F Coco
McDermott Will & Emery
444 West Lake Street

Chicago, IL 60606-0029

Megan Preusker
McDermott Will & Emery
444 West Lake Street
Chicago, IL 60606-0029

Jason M Reed
Maslon LLP
90 S 7th St Ste 3300
Minneapolis, MN 55402

Clark Whitmore
Maslon LLP
3300 Wells Fargo Center
90 S 7th St
Minneapolis, MN 55402

Daniel S Bleck
Mintz, Levin, et al
One Financial Center
Boston, MA 02111

Ian A Hammel
Mintz Levin Cohn Ferris Glovsky & Popeo
One Financial Center
Boston, MA 02111

Paul J Ricotta
Mintz Levin Cohn Ferris Glovsky and Pope
Chrysler Center
666 Third Ave
New York, NY 10017

Sam J Alberts
DENTONS US LLP
1900 K Street NW
Washington, DC 20006

Benjamin Rosenblum
250 Vesey St
New York, NY 10281

William P Wassweiler
Ballard Spahr LLP
80 S Eighth St Ste 2000
Minneapolis, MN 55402

3. SERVED BY OVERNIGHT MAIL AND ELECTRONIC MAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **March 22, 2019**, I served the following persons and/or entities by overnight mail and electronic mail as follows.

Samuel Maizel, Esq. (on ECF)
Dentons US LLP
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017
Samuel.Maizel@dentons.com

Hatty Yip, Esq. (on ECF)
Office of the United States Trustee
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017
Hatty.Yip@usdoj.gov

Tania M. Moyron
Dentons US LLP
601 S. Figueroa Street, Suite #2500
Los Angles, CA 90017
tania.moyron@dentons.com

James Moloney
Cain Brothers, a Division of KeyBanc Capital Markets
1 California Street, Suite #2400
San Francisco, CA 94111
jmoloney@cainbrothers.com

Gregory A. Bray
Milbank, Tweed, Hadley & McCloy LLP
2029 Century Park East, 33rd Floor

Los Angeles, CA 90067
gbray@milbank.com

Daniel S. Bleck
Paul Ricotta
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Once Financial Center
Boston, MA 02111
dsbleck@mintz.com
pricotta@mintz.com

Clark Whitmore
Maslon, LLP
3300 Wells Fargo Center, 90 South Seventh Street
Minneapolis, MN 55402
clark.whitmore@maslon.com

Gary E. Klausner, Esq.
Levene, Neale, Bender, Yoo & Brill L.L.P.
10250 Constellation Blv., Suite # 1700
Los Angeles, CA 90067
GEK@lnbyb.com

4. SERVED BY PERSONAL DELIVERY: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **March 22, 2019**, I served the following persons and/or entities by personal delivery as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles
United States Bankruptcy Court
255 East Temple Street
Courtroom 1568
Los Angeles, CA 90012
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 22, 2019	Stacy McKellar	
Date	*Printed Name*	*Signature*

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

June 2012

F 9013-3.1.PROOF.SERVICE

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General
KENNETH K. WANG
Deputy Attorney General
State Bar No. 201823
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6217
Fax: (213) 897-2805
E-mail: Kenneth.Wang@doj.ca.gov
Attorneys for Creditor
California Department of Health Care Services

IN THE UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re: **VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al.,** Debtor and Debtors In Possession.	CASE NO. 2:18-bk-20151-ER **DECLARATION OF HANH VO IN SUPPORT OF 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 (ECF NO. 1704)** Hearing: April 17, 2019 Time: 10:00 a.m. Courtroom: 1568 Judge Ernest M. Robles

Affects All Debtors.
Affects Verity Health System of California, Inc.
Affects O'Connor Hospital
Affects Saint Louise Regional Hospital
/x/ Affects St. Francis Medical Center
/x/ Affects St. Vincent Medical Center
/x/ 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 /x/ 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.

I, Hanh Vo, declare:

1. I am currently a Staff Services Manager II, serving as Chief of the General Collections Section of the Third Party Liability and Recovery Division of the California Department of Health Care Services (Department). I have been employed by the Department since September 2007. In that capacity, I have personal knowledge of the matters stated herein.

2. My responsibilities as Staff Services Manager II, Chief of the General Collections Section, include management oversight of all activities performed by three collection units of the Department, the Quality Assurance Fee (QAF) Units A & B, and the Overpayments Unit.

3. Attached as Exhibit 1 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for St. Vincent Medical Center, Inc., which was executed on or about October 15, 2009.

4. Attached as Exhibit 2 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for St. Francis Medical Center, which was executed on or about August 16, 2010.

5. Attached as Exhibit 3 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for Seton Medical Center, which was executed on or about October 2010.

6. Attached as Exhibit 4 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for Saint Vincent Dialysis Center, Inc., which was executed on or about March 7, 2011.

7. Attached as Exhibit 5 is a true and correct copy of the sample Medi-Cal Provider Agreement that was in effect in or about 2009 through 2011.

8. Based upon my personal knowledge and having reviewed Exhibits 1 through 5, I know that the substantive terms and provisions contained in these Medi-Cal Provider Agreements are similar.

9. I have reviewed the attached Hospital Quality Assurance Fee (HQA Fee) debt summaries for St. Vincent Medical Center, Inc., for St. Francis Medical Center, and for Seton Medical Center, which were prepared at my direction.

10. The calculation of the HQA Fee debt for these three hospitals is based upon the HQA Fee model.

11. The HQA Fee debt summaries are divided into six columns, which are described below:

(A) FISCAL YEAR – This term refers to the fiscal year period. The HQA Fee fiscal year is from July 1 through June 30.

(B) CYCLE (PERIOD) – This term refers to the period included under each HQA Fee payment cycle. HQA Fee cycles for Medi-Cal fee-for-service system are quarterly, and HQA Fee cycles for Medi-Cal Managed Care system cover all or the portion of the fiscal year included in the program phase.

(C) DUE DATE – This term refers to the date upon which a particular HQA Fee payment to the Department is due.

(D) AMOUNT DUE – This term refers to the amount owed by the Debtor as determined by the HQA Fee model.

(E) AMOUNT PAID – This term refers to the amount from the Debtor applied to the AMOUNT DUE of a particular HQA Fee PERIOD.

(F) WITHHELD – This term refers to the amount collected through Medi-Cal claims offset from the Debtor's Medi-Cal check writes and applied to the AMOUNT DUE of a PERIOD.

(G) OUTSTANDING BALANCE – This term refers to the amount of the HQA Fee debt that remains owed by the Debtor.

12. With regard to the noted amounts due for the Managed Care cycles, the amounts stated are estimates and are subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

13. Based upon my review of the attached HQA Fee debt summaries, I certify that total amount of HQA Fee debt for St. Vincent Medical Center (NPI No. 1124004304 and OSHPD No. 106190762) for Phase V (January 1, 2017 through June 30, 2019) is $21,427,707.82, for Seton Medical Center (NPI No. 1154428688, OSHPD No. 106410817) for Phases V is $28,160,469.45, and for St. Francis Medical Center (NPI No. 148769215, OSPHD No. 106190754) for Phase V is $30,381,769.53.

14. A true and correct copy of the debt summaries for St. Vincent Medical, Seton Medical Center and St. Francis Medical Center is attached to this declaration as Exhibit 6.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of March 2019, at Sacramento, California.

Hanh Vo

EXHIBIT 1

State of California — Health and Human Services Agency
Department of Health Care Services

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY
CACH
05-0502

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date: 10-15-09

Legal name of applicant or provider (as listed with the IRS): St. Vincent Medical Center, Inc.	Business name (if different than legal name): St. Vincent Medical Center		
Provider number (NPI number): 1124004304 SV		Business Telephone Number: (213) 484 - 7111	
Business address (number, street): 2131 West Third Street	City: Los Angeles	State: CA	Nine-digit ZIP code: 90057-0992
Mailing address (number, street, P.O. Box number): P.O. Box 57992	City: Los Angeles	State: CA	Nine-digit ZIP code: 90057-0992
Pay-to address (number, street, P.O. Box number): 2131 West Third Street	City: Los Angeles	State: CA	Nine-digit ZIP code: 90057-0992
Previous business address (number, street, P.O. Box number): N/A	City:	State:	Nine-digit ZIP code:
Taxpayer Identification Number**: 91-2154438			

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by the Department of Health Care Services (DHCS), or, from the date provider is approved for continued enrollment. This agreement may be terminated for cause if the Provider is suspended/excluded from further participation in the Medi-Cal program unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal program. This agreement may be terminated for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 27(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program. During any period in which the provider is on provisional provider status or preferred provisional provider status, DHCS may terminate this agreement for any of the grounds stated in Welfare and Institutions Code Section 14043.27(c).

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED
OCT 21 2009

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

11. **Confidentiality of Beneficiary Information.** Provider agrees that all medical records of beneficiaries made or acquired by Provider shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law.

12. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

13. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

14. **Unannounced Visits By DHCS, CDPH, AG and Secretary.** Provider agrees that DHCS, CDPH, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Failure to permit inspection by DHCS, CDPH, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

15. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

16. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any other government entity. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse. Provider further agrees that it shall be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which shall include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation for fraud or abuse. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse.

17. **Provider Fraud or Abuse Convictions and/or Civil Fraud or Abuse Liability.** Provider certifies that it and its owners, officers, directors, employees, and agents, has not: (1) been convicted of any felony or misdemeanor involving fraud or abuse in any government program, within the last ten years; or (2) been convicted of any felony or misdemeanor involving the abuse of any patient; or (3) been convicted of any felony or misdemeanor substantially related to the qualifications, functions, or duties of a provider; or (4) entered into a settlement in lieu of conviction for fraud or abuse, within the last ten years; or, (5) been found liable for fraud or abuse in any civil proceeding, within the last ten years. Provider further agrees that DHCS shall not enroll Provider if within the last ten years, Provider has been convicted of any felony or any misdemeanor involving fraud or abuse in any government program, has entered into a settlement in lieu of conviction for fraud or abuse, or has been found liable for fraud or abuse in any civil proceeding.

or managing employees of the provider have been convicted of any felony, or convicted of any misdemeanor involving fraud or abuse in any government program, related to neglect or abuse of a patient in connection with the delivery of a health care item or service, or in connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse, or have been found liable for fraud or abuse in any civil proceeding, or have entered into a settlement in lieu of conviction for fraud or abuse in any government program within 10 years of the date of the application package.

b. There is a material discrepancy in the information provided to the department, or with the requirements to be enrolled, that is discovered after provisional provider status or preferred provisional provider status has been granted and that cannot be corrected because the discrepancy occurred in the past.

c. The provider has provided material information that was false or misleading at the time it was provided.

d. The provider failed to have an established place of business at the business address for which the application package was submitted at the time of any onsite inspection, announced or unannounced visit, or any additional inspection or review conducted pursuant to this article or a statute or regulation governing the Medi-Cal program, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods supplies, or merchandise are rendered or delivered at locations other than the business address and this practice of delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status of preferred provisional provider status was granted.

e. The provider meets the definition of a clinic under Section 1200 of the Health and Safety Code, but is not licensed as a clinic pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and fails to meet the requirements to qualify for at least one exemption pursuant to Section 1206 or 1206.1 of the Health and Safety Code.

f. The provider performs clinical laboratory tests or examinations, but it or its personnel do not meet CLIA, and the regulations adopted thereunder, and the state clinical laboratory law, do not possess valid CLIA certificates and clinical laboratory registrations or licenses pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code, or are not exempt from licensure as a clinical laboratory under Section 1241 of the Business and Professions Code.

g. The provider fails to possess either of the following:

(1) The appropriate licenses, permits, certificates, or other approvals needed to practice the profession or occupation, or provide the services, goods, supplies, or merchandise the provider identified in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted and for the location for which the application was submitted.

(2) The business or zoning permits or other approval necessary to operate a business at the location identified in its application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

h. The provider, or if the provider is a clinic, group, partnership, corporation, or other association, any officer, director, or shareholder with a 10 percent or greater interest in that organization, commits two or more violations of the federal or state statues or regulation governing the Medi-Cal program, and the violations demonstrate a pattern or practice of fraud, abuse, or provision of unnecessary or substandard medical services.

i. The provider commits any violation of a federal or state statute or regulation governing the Medi-Cal program or of a statute or regulation governing the provider's profession or occupation and the violation represents a threat of immediate jeopardy or significant harm to any Medi-Cal beneficiary or to the public welfare.

j. The provider submits claims for payment that subject a provider to suspension under Section 14043.61.

k. The provider submits claims for payment for services, goods, supplies, or merchandise rendered at a location other than the location for which the provider number was issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status was granted.

(4). Provider refuses to provide access to records pursuant to Welfare and Institutions Code, Section 14124.1 and pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section14123(c)).

(5). Provider submits claims for payment under any provider number from an individual or entity that is suspended, excluded or otherwise ineligible. This includes a provider on the Suspended and Ineligible Provider List or any list published by the Office of the Inspector General or the Department of Health and Human Services. Appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.61).

28. **Provider Termination, Imposition of Federal Sanctions, and Appeal Rights for Long Term Care Facilities.** Provider agrees that it is subject to any federal sanctions authorized under the state plan including termination of this provider agreement in accordance with federal law. Provider further agrees that the termination of this provider agreement or imposition of other federal sanctions authorized under the state plan shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the termination or imposition of sanctions.

a. **Skilled Nursing Facility and Intermediate Care Facility Appeal Procedures.** SNF and ICF Medi-Cal Providers shall have the appeal rights set forth in Article 1.6 of Chapter 3 of Division 3 of Title 22.

b. **Intermediate Care Facilities-Mental Retardation Appeal Procedures.** Intermediate Care Facilities-Developmentally Disabled; Intermediate Care Facilities-Developmentally Disabled-Habilitative; Intermediate Care Facilities-Developmentally Disabled-Nursing shall have the appeal rights set forth in 42 CFR 431.153 and 431.154.

29. **Liability of Group Providers.** Provider agrees that, if it is a provider goup, the group, and each member of the group, are jointly and severally liable for any breach of this Agreement, and that action against any of the providers in the provider group may result in action against all of the members of the provider group.

30. **Legislative and Congressional Changes.** Provider agrees that this Agreement is subject to any future additional requirements, restrictions, limitations, or conditions enacted by the California Legislature or the United States Congress which may affect the provisions, terms, conditions, or funding of this Agreement in any manner.

31. **Provider Capacity.** Provider agrees that Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

Provider agrees that compliance with the provisions of this agreement is a condition precedent to payment to provider.

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

1. Printed legal name of provider: St. Vincent Medical Center, Inc.
2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in item 1 above): Cathy Fickes
3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor
4. Title of person signing this declaration: President/CEO
5. Notary Public (Affix notary seal or stamp in the space below)

See Attached California ~~Acknowelegement~~ Acknowlegement

Executed at: _____ (City), _____ (State) on _____ (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. Contact Person's Information

☐ Check here if you are the same person identified in Item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last)	(first)	(middle)	(gender)
			☐ Male ☐ Female
Title/Position	CathyFickes@dochs.org (Email address)	213-484-7111 (Telephone Number)	

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a). The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles

On 15 Oct 2009 (Date) before me, Robert S. Yesko, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Cathy Fickes (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Robert S. Yesko Notary Public (Signature of Notary Public)

ROBERT S. YESKO
Commission # 1742488
Notary Public - California
Los Angeles County
My Comm. Expires May 16, 2011

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Medi-Cal Provider Agreement

Document Date: 15 Oct 2009 Number of Pages: 2 + 9 Information - Typed Signature 9 pages

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: Cathy Fickes
☐ Individual
☒ Corporate Officer — Title(s): President/CEO
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer is Representing: St Vincent Medical Center, Los Angeles

RIGHT THUMBPRINT OF SIGNER — Top of thumb here

Signer's Name:
☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer is Representing:

RIGHT THUMBPRINT OF SIGNER — Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

EXHIBIT 2

P.2

State of California—Health and Human Services Agency

Department of Health Care Services

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY

55-5238

Date

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Legal name of applicant or provider (as listed with the IRS)	Business name (if different than legal name)		
St. Francis Medical Center	ST. FRANCIS MEDICAL CENTER D/P SNF		
Provider number (NPI number) 1487697215(Acute); 1245227180(SNF)		Business Telephone Number (310) 900-8900	
Business address (number, street) 3630 E. Imperial Highway	City Lynwood	State CA	Nine-digit ZIP code 90262
Mailing address (number, street, P.O. Box number) 3630 E. Imperial Highway	City Lynwood	State CA	Nine-digit ZIP code 90262
Pay-to address (number, street, P.O. Box number) File #56850	City Los Angeles	State CA	Nine-digit ZIP code 90074
Previous business address (number, street, P.O. Box number) N/A	City N/A	State N/A	Nine-digit ZIP code N/A

Taxpayer Identification Number**
91-2154439

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by DHCS, or, from the date provider is approved for continued enrollment. Provider may terminate this Agreement by providing DHCS with written notice of intent to terminate, which termination shall result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedure Act) from further participation in the Medi-Cal program, including deactivation of any provider agreement, unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal Program. DHCS may immediately terminate this Agreement for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 25(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program.

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED
AUG 26 2010

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors

10. **Confidentiality of Beneficiary Information.** Provider agrees that all documents, whether paper, electronic or in any media, that contain protected health information as defined under the Health Information Portability and Accountability Act or personal, confidential information of beneficiaries made or acquired by Provider, shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law. Provider agrees to enter into a business associate agreement with any billing agents to assure that they comply with these requirements.

11. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

12. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

13. **Unannounced Visits By DHCS, AG and Secretary.** Provider agrees that DHCS, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Pursuant to Welfare and Institutions Code Section 14043.7(b), such unannounced visits are authorized should the department have reason to believe that the provider will defraud or abuse the Medi-Cal program or lacks the organizational or administrative capacity to provide services under the program. Failure to permit inspection by DHCS, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

14. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

15. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any Federal, state or local law enforcement agency, including the Medicaid investigation units of DHCS and the Office of the Inspector General for the Federal Department of Health and Human Services. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse by any such entity. Provider further agrees that it may be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which may include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation as described in that section. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse, although Provider does not waive any timely and properly asserted rights it may have under the 5th Amendment privilege against self-incrimination.

23. **Compliance With Requirements.** Provider and any billing agent agree that it shall comply with all of the requirements set forth in the Welfare and Institutions Code and its implementing regulations, and the Medi-Cal Provider Manuals, including applicable changes to the Medi-Cal Provider Manuals published by DHCS subsequent to the effective date of this Agreement. Providers and their billing agents agree to comply with Welfare and Institutions Code Section 14115 and California Code of Regulations, Title 22, Section 51008 and 51008.5. Providers agree to submit all claims within 60 days of the dates of service but no later than six months to receive full payment. Provider and its billing agent also agree to exhaust all administrative remedies with the fiscal intermediary prior to filing a writ of mandate pursuant to Welfare and Institutions Code Section 14104.5. In the event DHCS determines a reimbursement overpayment has been made to Provider or monies are otherwise owed pursuant to this Agreement, Provider agrees to promptly repay the amounts owed in accordance with applicable federal and California statutes and regulations, and rules and policies of DHCS. DHCS may recoup any overpayment from monies otherwise payable to Provider under this Agreement under any provider number of Provider.

24. **Deficit Reduction Act of 2005, Section 6032 Implementation.** To the extent applicable, as a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act (42 USC 1396a(a)(68)), set forth in that subsection and as the federal Secretary of Health and Human Services may specify.

25. **Provider Suspension; Appeal Rights; Reinstatement.** Provider agrees that it is to be subject to the following suspension actions. Provider further agrees that the suspension of Provider shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment, either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the suspension.

a. **Automatic Suspensions/Mandatory Exclusions.** The provider shall be automatically suspended under the following circumstances:

(1) Upon notice from the Secretary of the United States Department of Health and Human Services that Provider has been excluded from participation in the Medicare or Medicaid programs. No administrative appeal of a suspension on this ground shall be available to Provider. (Welfare and Institutions Code, Section 14123(b),(c)).

(2) If Provider has license(s), certificate(s), or other approval(s) to provide health care services, revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that license, certificate, or approval was pending. (Welfare and Institutions Code, Section 14043.6).

(3) If Provider is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Suspension following conviction is not subject to the proceedings under Welfare and Institutions Code Section 14123(c). However, the director may grant an informal hearing at the request of the provider to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension.

b. **Permissive Suspensions/Permissive Exclusions.** The provider may be suspended under the following circumstances:

(1) Provider violates any of the provisions of Chapter 7 of the Welfare and Institutions Code (commencing with Section 14000 except for Sections 14043-14044), or Chapter 8 (commencing with Section 14200) or any rule or regulations promulgated by DHCS pursuant to those provisions. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14123(a),(c)).

(2) Provider fails to comply with DHCS's request to examine or receive copies of the books and records pertaining to services rendered to Medi-Cal beneficiaries. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14124.2).

(3) Provider participating in the Medi-Cal dental program provides services, goods, supplies, or merchandise that are below or less than the standard of acceptable quality, as established by the California Dental Association Guidelines for the Assessment of Clinical Quality and Professional Performance, Copyright 1995, Third Edition, as periodically amended. (Welfare and Institutions Code, Section 14123(f)).

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

1. Printed legal name of provider
   St. Francis Medical Center
2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in item 1 above)
   Gerald T. Kozai, Pharm D.
3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor
4. Title of person signing this declaration
   President and C.E.O.
5. Notary Public (Affix notary seal or stamp in the space below)

State of California, County of Los Angeles
Subscribed and sworn to (or affirmed) before me on this 16th day of Aug, 2010, by Gerald T Kozai proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
Larcenia L Freeman
(Signature of Notary)

LARCENIA L. FREEMAN
Commission # 1801587
Notary Public - California
Los Angeles County
My Comm. Expires Jul 10, 2012

Executed at: Lynwood (City), California (State) on August 16, 2010 (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. **Contact Person's Information**
   ☐ Check here if you are the same person identified in item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last)	(first)	(middle)	(gender)
Thomas, Ta-Tanisha			☐ Male ☑ Female

Title/Position	Email address	Telephone Number
Director of ManagedCare and Provider Relations	tanishathomas@dochs.org	(310) 900-7323

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a). The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

EXHIBIT 3

8-5

State of California—Health and Human Services Agency

Department of Health Care Services

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY
05-0289

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date

Legal name of applicant or provider (as listed with the IRS)	Business name (if different than legal name)		
SEQUOIA MEDICAL CENTER	SAME		
Provider number (NPI number)		Business Telephone Number	
1154428688		(650) 991-6400	
Business address (number, street)	City	State	Nine-digit ZIP code
1900 SULLIVAN AVE.	DALY CITY	CA	94015-4132
Mailing address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
1900 SULLIVAN AVE.	DALY CITY	CA	94015-4132
Pay-to address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
1900 SULLIVAN AVE.	DALY CITY	CA	94015-4132
Previous business address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code

Taxpayer Identification Number**
912154441

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by DHCS, or, from the date provider is approved for continued enrollment. Provider may terminate this Agreement by providing DHCS with written notice of intent to terminate, which termination shall result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedure Act) from further participation in the Medi-Cal program, including deactivation of any provider agreement, unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal Program. DHCS may immediately terminate this Agreement for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 25(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program.

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED
OCT 12 2010

4/3/17

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

10. **Confidentiality of Beneficiary Information.** Provider agrees that all documents, whether paper, electronic or in any media, that contain protected health information as defined under the Health Information Portability and Accountability Act or personal, confidential information of beneficiaries made or acquired by Provider, shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law. Provider agrees to enter into a business associate agreement with any billing agents to assure that they comply with these requirements.

11. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

12. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

13. **Unannounced Visits By DHCS, AG and Secretary.** Provider agrees that DHCS, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Pursuant to Welfare and Institutions Code Section 14043.7(b), such unannounced visits are authorized should the department have reason to believe that the provider will defraud or abuse the Medi-Cal program or lacks the organizational or administrative capacity to provide services under the program. Failure to permit inspection by DHCS, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

14. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

15. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any Federal, state or local law enforcement agency, including the Medicaid investigation units of DHCS and the Office of the Inspector General for the Federal Department of Health and Human Services. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse by any such entity. Provider further agrees that it may be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which may include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation as described in that section. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse, although Provider does not waive any timely and properly asserted rights it may have under the 5th Amendment privilege against self-incrimination.

23. **Compliance With Requirements.** Provider and any billing agent agree that it shall comply with all of the requirements set forth in the Welfare and Institutions Code and its implementing regulations, and the Medi-Cal Provider Manuals, including applicable changes to the Medi-Cal Provider Manuals published by DHCS subsequent to the effective date of this Agreement. Providers and their billing agents agree to comply with Welfare and Institutions Code Section 14115 and California Code of Regulations, Title 22, Section 51008 and 51008.5. Providers agree to submit all claims within 60 days of the dates of service but no later than six months to receive full payment. Provider and its billing agent also agree to exhaust all administrative remedies with the fiscal intermediary prior to filing a writ of mandate pursuant to Welfare and Institutions Code Section 14104.5. In the event DHCS determines a reimbursement overpayment has been made to Provider or monies are otherwise owed pursuant to this Agreement, Provider agrees to promptly repay the amounts owed in accordance with applicable federal and California statutes and regulations, and rules and policies of DHCS. DHCS may recoup any overpayment from monies otherwise payable to Provider under this Agreement under any provider number of Provider.

24. **Deficit Reduction Act of 2005, Section 6032 Implementation.** To the extent applicable, as a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act (42 USC 1396a(a)(68)), set forth in that subsection and as the federal Secretary of Health and Human Services may specify.

25. **Provider Suspension; Appeal Rights; Reinstatement.** Provider agrees that it is to be subject to the following suspension actions. Provider further agrees that the suspension of Provider shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment, either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the suspension.

a. **Automatic Suspensions/Mandatory Exclusions.** The provider shall be automatically suspended under the following circumstances:

(1) Upon notice from the Secretary of the United States Department of Health and Human Services that Provider has been excluded from participation in the Medicare or Medicaid programs. No administrative appeal of a suspension on this ground shall be available to Provider. (Welfare and Institutions Code, Section 14123(b),(c)).

(2) If Provider has license(s), certificate(s), or other approval(s) to provide health care services, revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that license, certificate, or approval was pending. (Welfare and Institutions Code, Section 14043.6).

(3) If Provider is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Suspension following conviction is not subject to the proceedings under Welfare and Institutions Code Section 14123(c). However, the director may grant an informal hearing at the request of the provider to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension.

b. **Permissive Suspensions/Permissive Exclusions.** The provider may be suspended under the following circumstances:

(1) Provider violates any of the provisions of Chapter 7 of the Welfare and Institutions Code (commencing with Section 14000 except for Sections 14043-14044), or Chapter 8 (commencing with Section 14200) or any rule or regulations promulgated by DHCS pursuant to those provisions. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14123(a),(c)).

(2) Provider fails to comply with DHCS's request to examine or receive copies of the books and records pertaining to services rendered to Medi-Cal beneficiaries. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14124.2).

(3) Provider participating in the Medi-Cal dental program provides services, goods, supplies, or merchandise that are below or less than the standard of acceptable quality, as established by the California Dental Association Guidelines for the Assessment of Clinical Quality and Professional Performance, Copyright 1995, Third Edition, as periodically amended. (Welfare and Institutions Code, Section 14123(f)).

30. **Provider Capacity.** Provider agrees that Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

31. **Indemnification.** Provider agrees to indemnify, defend, and save harmless the State of California, its officers, agents, and employees, from any and all claims and losses accruing or resulting to any and all persons, firms, or corporations furnishing or supplying services, materials, or supplies in connection with Provider's performance of this Agreement, and from any and all claims and losses accruing or resulting to any Medi-Cal beneficiary, or to any other person, firm, or corporation who may be injured or damaged by Provider in the performance of this Agreement.

32. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

33. **Venue.** Venue for all actions, including federal actions, concerning this Agreement, lies in Sacramento County, California, or in any other county in which the California Department of Justice maintains an office.

34. **Titles.** The titles of the provisions of this Agreement are for convenience and reference only and are not to be considered in interpreting this Agreement.

35. **Severability.** If one or more of the provisions of this Agreement shall be invalid, illegal, void, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. Either party having knowledge of such a provision shall promptly inform the other of the presumed non-applicability of such provision. Should the non-applicable provision go to the heart of this Agreement, the Agreement shall be terminated in a manner commensurate with the interests of both parties.

36. **Assignability.** Provider agrees that it has no property right in or to its status as a Provider in the Medi-Cal program or in or to the provider number(s) assigned to it, and that Provider may not assign its provider number for use as a Medi-Cal provider, or any rights and obligations it has under this Agreement except to the extent purchasing owner is joining this provider agreement with successor joint and several liability.

37. **Waiver.** Any action or inaction by DHCS or any failure of DHCS on any occasion, to enforce any right or provision of this Agreement, shall not be interpreted to be a waiver by DHCS of its rights hereunder and shall not prevent DHCS from enforcing such provision or right on any future occasion. The rights and remedies of DHCS herein are cumulative and are in addition to any other rights or remedies that DHCS may have at law or in equity.

38. **Complete Integration.** This Agreement, including any attachments or documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of this Agreement, unless such additional agreement(s) is between DHCS and the Provider, expressly references or incorporates all or part of this Agreement, and is signed by the Provider.

39. **Amendment.** Any alteration or modification by the applicant or Provider of this Medi-Cal Provider Agreement (DHCS Form 9098) or to any of the terms in its exhibits or attachments, shall automatically and immediately void this agreement upon submission of the signed agreement to the State, unless such agreement is also signed by the State.

40. **Provider Attestation.** Provider agrees that all information it submits on the application form for enrollment, this Agreement, and all attachments or changes to either, is true, accurate, and complete to the best of Provider's knowledge and belief. Provider further agrees to sign the application form for enrollment, this Agreement, and all attachments or changes to either, under penalty of perjury under the laws of the State of California.

EXHIBIT 4

State of California—Health and Human Services Agency

Department of Health Care Services

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY
052582

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date: 3 / 7 /2011

Legal name of applicant or provider (as listed with the IRS) SAINT VINCENT DIALYSIS CENTER, INC	Business name (if different than legal name)		
Provider number (NPI number) 1992700314 CDC700302		Business Telephone Number (213) 484-7426	
Business address (number, street) 201 SOUTH ALVARADO STREET, SUITE 220	City LOS ANGELES	State CA	Nine-digit ZIP code 90057-3413
Mailing address (number, street, P.O. Box number) S.A.A.	City	State	Nine-digit ZIP code
Pay-to address (number, street, P.O. Box number) S.A.A.	City	State	Nine-digit ZIP code
Previous business address (number, street, P.O. Box number) N/A	City	State	Nine-digit ZIP code
Taxpayer Identification Number** 95-3749293			

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by DHCS, or, from the date provider is approved for continued enrollment. Provider may terminate this Agreement by providing DHCS with written notice of intent to terminate, which termination shall result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedure Act) from further participation in the Medi-Cal program, including deactivation of any provider agreement, unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal Program. DHCS may immediately terminate this Agreement for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 25(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program.

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED
MAR 28 2011

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

458698

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

1. Printed legal name of provider

SAINT VINCENT DIALYSIS CENTER, INC.

2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in item 1 above)

JAMES T. ROE, M.D.

3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor

X James T. Roe MD

4. Title of person signing this declaration

MEDICAL DIRECTOR

5. Notary Public (Affix notary seal or stamp in the space below)

See attached acknowledgment 3/15/11 thr

Executed at: LOS ANGELES (City) CA (State) on / / (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. **Contact Person's Information**

☑ Check here if you are the same person identified in item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last) (first) (middle) (gender) ☐ Male ☐ Female

Title/Position

Email address: gracieperez@dochs.org

Telephone Number: 213 484-7295

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a). The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES }

On MAR 15, 2011 (Date) before me, VENUS NEVERSON NOTARY PUBLIC (Here Insert Name and Title of the Officer)

personally appeared JAMES T. ROE, M.D (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

VENUS NEVERSON
Commission # 1742270
Notary Public - California
Los Angeles County
My Comm. Expires May 21, 2011

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Venus Neverson (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Medi-Cal Provider Agreement

Document Date: 3/7/11 Number of Pages: 2

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: JAMES T. ROE, M.D
- ☒ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name:
- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☒ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

UN 3/15/10

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

VKN 3/15/11 MCPA

STATE OF CALIFORNIA – HEALTH AND WELFARE AG

DEPARTMENT OF HEALTH SERVICES

DEPARTMENT OF HEALTH SERVICES SACRAMENTO OCT 0 1 1982 Provider Certification Program

MEDI-CAL PROVIDER DATA FORM

1. FACILITY NAME 202
St. Vincent Dialysis Center, Inc.

2. FACILITY ADDRESS 203
NUMBER STREET ROOM/SUITE
201 South Alvarado Street Suite 220
CITY COUNTY STATE ZIP CODE
Los Angeles, California 90057

3. PAY TO ADDRESS (IF DIFFERENT) 204
NUMBER STREET ROOM/SUITE
Same
CITY COUNTY STATE ZIP CODE

4. FEDERAL EMPLOYER'S ID NUMBER 212
95-3749293

5. FISCAL YEAR END MONTH 216
June 30, 1983

6A. TYPE OF ORGANIZATION (CHECK ONE) 210
- ☐ State Government
- ☐ County Government
- ☐ City Government
- ☒ Nongovernmental Nonprofit
- ☐ Nongovernmental for Profit
- ☐ Other (specify)

6B. TYPE OF OWNERSHIP (CHECK ONE) 210
- ☐ Individual
- ☒ Corporation
- ☐ Partnership
- ☐ Other (specify)

7. List facility owner(s). List owner(s) professional license numbers, if applicable. (For corporations, list corporate name only.) *(Attach a separate sheet of paper if more space is needed).* 266/250

NAME	PROFESSIONAL STATE LICENSE NUMBER	NAME	PROFESSIONAL STATE LICENSE NUMBER
St. Vincent Dialysis Center, Inc.			

8. In addition to this facility, please indicate other facilities or practices that the owner(s) may have. 270
(Attach a separate sheet of paper if more space is needed).

ADDRESS (Actual Facility or Practice Location)	NAME USED FOR BILLING FROM THIS LOCATION	PROVIDER NUMBER ASSIGNED TO THIS LOCATION
NONE		

9. List previous Medi-Cal provider numbers that the owner(s) have been issued. 271
NONE

10. Is this a teaching facility for residents and/or interns who are salaried by a hospital? ☐ Yes ☒ No 247

I certify that the above information is true, accurate and complete to the best of my knowledge.

11. APPLICANT'S TYPED OR PRINTED NAME	12. APPLICANT'S TYPED OR PRINTED TITLE
Sina M. Pierret	Executive Director
13. APPLICANT'S SIGNATURE	**14. DATE**
▶ Sina M. Pierret	September 29, 1982

MC 803 (11/79)

EXHIBIT 5

State of California—Health and Human Services Agency
Department of Health Care Services

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date

Legal name of applicant or provider (as listed with the IRS)	Business name (if different than legal name)		
Provider number (NPI number)		Business Telephone Number ( )	
Business address (number, street)	City	State	Nine-digit ZIP code
Mailing address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
Pay-to address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
Previous business address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
Taxpayer Identification Number**			

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by the Department of Health Care Services (DHCS), or, from the date provider is approved for continued enrollment. This agreement may be terminated for cause if the Provider is suspended/excluded from further participation in the Medi-Cal program unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal program. This agreement may be terminated for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 27(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program. During any period in which the provider is on provisional provider status or preferred provisional provider status, DHCS may terminate this agreement for any of the grounds stated in Welfare and Institutions Code Section 14043.27(c).

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

3. **National Provider Identifier (NPI).** Provider agrees not to submit any claims to DHCS using an NPI unless that NPI is appropriately registered with the Centers for Medicare and Medicaid Services (CMS) and is in compliance with all NPI requirements established by CMS as of the date the claim is submitted. Provider agrees that submission of an NPI to DHCS as part of an application to use that NPI to obtain payment constitutes an implied representation that the NPI submitted is appropriately registered and in compliance with all CMS requirements at the time of submission. Provider also agrees that any subsequent defect in registration or compliance of the NPI constitutes an "addition or change in the information previously submitted" which must be reported to DHCS under the requirements of California Code of Regulations, Title 22, Section 51000.40.

4. **Forbidden Conduct.** Provider agrees that it shall not engage in conduct inimical to the public health, morals, welfare and safety of any Medi-Cal beneficiary, or the fiscal integrity of the Medi-Cal program.

5. **Nondiscrimination.** Provider agrees that it shall not exclude or deny aid, care, service or other benefits available under Medi-Cal or in any other way discriminate against a person because of that person's race, color, ancestry, marital status, national origin, gender, age, economic status, physical or mental disability, political or religious affiliation or beliefs in accordance with California and federal laws. Provider further agrees that it shall provide aid, care, service, or other benefits available under Medi-Cal to Medi-Cal beneficiaries in the same manner, by the same methods, and at the same scope, level, and quality as provided to the general public.

6. **Scope of Health and Medical Care.** Provider agrees that the health care services it provides may include diagnostic, preventive, corrective, and curative services, goods, supplies, and merchandise essential thereto, provided by qualified personnel for conditions that cause suffering, endanger life, result in illness or infirmity, interfere with capacity for normal activity, including employment, or for conditions which may develop into some significant handicap or disability. Provider further agrees such health care services may be subject to prior authorization to determine medical necessity.

7. **Licensing.** Provider agrees to possess at the time this Agreement becomes effective, and to maintain in good standing throughout the term of this Agreement, valid and unexpired license(s), certificate(s), or other approval(s) to provide health care services, which is appropriate to the services, goods, supplies, and merchandise being provided, if required by the state or locality in which Provider is located, or by the Federal Government. Provider further agrees it shall be automatically suspended as a provider in the Medi-Cal program pursuant to Welfare and Institutions Code, Section 14043.6, if Provider has license(s), certificate(s), or other approval(s) to provide health care services, which are revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that/those license(s), certificate(s), or approval(s) was pending. Such suspension shall be effective on the date that Provider's license, certificate, or approval was revoked, suspended, lost, or surrendered. Provider further agrees to notify DHCS within ten business days of learning that any restriction has been placed on, or of a suspension of Provider's license, certificate, or other approval to provide health care. Provider further agrees to provide DHCS complete information related to any restriction to, or revocation or loss of, Provider's license, certificate, or other approval to provide health care services.

8. **Insurance.** Provider agrees to possess at the time this Agreement becomes effective, and to maintain in good standing throughout the term of this Agreement, liability insurance for the business address and, if a licensed practitioner, professional liability (malpractice) insurance coverage from an authorized insurer pursuant to Section 700 of the Insurance Code.

9. **Record Keeping and Retention.** Provider agrees to make, keep and maintain in a systematic and orderly manner, and have readily retrievable, such records as are necessary to fully disclose the type and extent of all services, goods, supplies, and merchandise provided to Medi-Cal beneficiaries, including, but not limited to, the records described in Section 51476 of Title 22, California Code of Regulations, and the records described in Section 431.107 of Title 42 of the Code of Federal Regulations. Provider further agrees that such records shall be made at or near the time at which the services, goods, supplies, and merchandise are delivered or rendered, and that such records shall be retained by Provider in the form in which they are regularly kept for a period of three years from the date the goods, supplies, or merchandise were delivered or the services rendered.

10. **DHCS, CDPH, AG and Secretary Access to Records; Copies of Records.** Provider agrees to make available, during regular business hours, all pertinent financial records, all records of the requisite insurance coverage, and all records concerning the provision of health care services to Medi-Cal beneficiaries to any duly authorized representative of DHCS, CDPH, the California Attorney General's Medi-Cal Fraud Unit ("AG"), and the Secretary of the United States Centers for Medicare and Medicaid Services (Secretary). Provider further agrees to provide, if requested by any of the above, copies of the records and documentation, and that failure to comply with any request to examine or receive copies of such records shall be grounds for immediate suspension of Provider from participation in the Medi-Cal program. Provider will be reimbursed for reasonable copy costs as determined by DHCS, CDPH, AG or Secretary.

11. **Confidentiality of Beneficiary Information.** Provider agrees that all medical records of beneficiaries made or acquired by Provider shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law.

12. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

13. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

14. **Unannounced Visits By DHCS, CDPH, AG and Secretary.** Provider agrees that DHCS, CDPH, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Failure to permit inspection by DHCS, CDPH, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

15. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

16. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any other government entity. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse. Provider further agrees that it shall be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which shall include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation for fraud or abuse. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse.

17. **Provider Fraud or Abuse Convictions and/or Civil Fraud or Abuse Liability.** Provider certifies that it and its owners, officers, directors, employees, and agents, has not: (1) been convicted of any felony or misdemeanor involving fraud or abuse in any government program, within the last ten years; or (2) been convicted of any felony or misdemeanor involving the abuse of any patient; or (3) been convicted of any felony or misdemeanor substantially related to the qualifications, functions, or duties of a provider; or (4) entered into a settlement in lieu of conviction for fraud or abuse, within the last ten years; or, (5) been found liable for fraud or abuse in any civil proceeding, within the last ten years. Provider further agrees that DHCS shall not enroll Provider if within the last ten years, Provider has been convicted of any felony or any misdemeanor involving fraud or abuse in any government program, has entered into a settlement in lieu of conviction for fraud or abuse, or has been found liable for fraud or abuse in any civil proceeding.

18. **Changes to Provider Information.** Provider agrees to keep its application for enrollment in the Medi-Cal program current by informing the California Department of Public Health (CDPH), District Office, in writing on a form or forms to be specified by DHCS, within 35 days of any changes to the information contained in its application for enrollment, its disclosure statement, this Agreement, and/or any attachments to these documents.

19. **Prohibition of Rebate, Refund, or Discount.** Provider agrees that it shall not offer, give, furnish, or deliver any rebate, refund, commission preference, patronage dividend, discount, or any other gratuitous consideration, in connection with the rendering of health care services to any Medi-Cal beneficiary. Provider further agrees that it shall not solicit, request, accept, or receive, any rebate, refund, commission preference, patronage dividend, discount, or any other gratuitous consideration, in connection with the rendering of health care services to any Medi-Cal beneficiary. Provider further agrees that it will not take any other action or receive any other benefit prohibited by state or federal law.

20. **Payment From Other Health Coverage Prerequisite to Claim Submission.** Provider agrees that it shall first seek to obtain payment for services provided to Medi-Cal beneficiaries from any private or public health insurance coverage to which the beneficiary is entitled, where Provider is aware of this coverage and to the extent the coverage extends to these services, prior to submitting a claim to DHCS for the payment of any unpaid balance for these services. In the event that a claim submitted to a private or public health insurer has not been paid within 90 days of billing by Provider, Provider may submit a claim to DHCS.

21. **Beneficiary Billing.** Provider agrees that it shall not submit claims to or demand or otherwise collect reimbursement from a Medi-Cal beneficiary, or from other persons on behalf of the beneficiary, for any service included in the Medi-Cal program's scope of benefits in addition to a claim submitted to the Medi-Cal program for that service, except to: (1) collect payments due under a contractual or legal entitlement pursuant to Welfare and Institutions Code, Section 14000(b); (2) bill a long-term care patient for the amount of his/her liability; and, (3) collect a co-payment pursuant to Welfare and Institutions Code, Sections 14134 and 14134.1. Provider further agrees that, in the event that a beneficiary willfully refuses to provide current other health care coverage billing information as described in Section 50763(a)(5) of Title 22, California Code of Regulations, Provider may, upon giving the beneficiary written notice of intent, bill the beneficiary as a private pay patient.

22. **Payment From Medi-Cal Program Shall Constitute Full Payment.** Provider agrees that payment received from DHCS in accordance with Medi-Cal fee structures shall constitute payment in full, except that Provider, after making a full refund to DHCS of any Medi-Cal payments received for services, goods, supplies, or merchandise, may recover all of Provider's fees to the extent that any other contractual entitlement, including, but not limited to, a private group or indemnification insurance program, is obligated to pay the charges for the services, goods, supplies, or merchandise provided to the beneficiary.

23. **Return of Payment for Services Otherwise Covered by the Medi-Cal Program.** Provider agrees that any beneficiary who has paid Provider for health care services, goods, supplies, or merchandise otherwise covered by the Medi-Cal program received by the beneficiary shall be entitled to a prompt return from Provider of any part of the payment which meets any of the following: (1) was rendered during any period prior to the receipt of the beneficiary's Medi-Cal card, for which the card authorizes payment under Welfare and Institutions Code, Sections 14018 or 14019; (2) was reimbursed to Provider by the Medi-Cal program, following audits and appeals to which Provider is entitled; (3) is not payable by a third party under contractual or other legal entitlement; (4) was not used by the beneficiary to satisfy his/her paid or obligated liability for health care services, goods, supplies, or merchandise, or to establish eligibility.

24. **Compliance With Billing and Claims Requirements.** Provider agrees that it shall comply with all of the billing and claims requirements set forth in the Welfare and Institutions Code and its implementing regulations, and the provider manual.

25. **Deficit Reduction Act of 2005, Section 6032 Implementation.** As a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act (42 USC 1396a(a)(68)), set forth in that subsection and as the federal Secretary of Health and Human Services may specify.

26. **Termination of Provisional Provider or Preferred Provisional Provider Status.** Provider agrees that, while it is on provisional provider status or preferred provisional provider status, the provider will be subject to immediate termination of its provisional provider status or preferred provisional provider status and disenrollment from the Medi-Cal program in the following circumstances:

The provider, or if the provider is a clinic, group, partnership, corporation, or other association, any officer, director, or shareholder with a 10 percent or greater interest in the provider, or persons who are directors, officers, or managing employees of the provider have been convicted of any felony, or convicted of any misdemeanor involving fraud or abuse in any government program, related to neglect or abuse of a patient in connection with the delivery of a health care item or service, or in connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse, or have been found liable for fraud or abuse in any civil proceeding, or have entered into a settlement in lieu of conviction for fraud or abuse in any government program within 10 years of the date of the application package.

b. There is a material discrepancy in the information provided to the department, or with the requirements to be enrolled, that is discovered after provisional provider status or preferred provisional provider status has been granted and that cannot be corrected because the discrepancy occurred in the past.

c. The provider has provided material information that was false or misleading at the time it was provided.

d. The provider failed to have an established place of business at the business address for which the application package was submitted at the time of any onsite inspection, announced or unannounced visit, or any additional inspection or review conducted pursuant to this article or a statute or regulation governing the Medi-Cal program, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods supplies, or merchandise are rendered or delivered at locations other than the business address and this practice of delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status of preferred provisional provider status was granted.

e. The provider meets the definition of a clinic under Section 1200 of the Health and Safety Code, but is not licensed as a clinic pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and fails to meet the requirements to qualify for at least one exemption pursuant to Section 1206 or 1206.1 of the Health and Safety Code.

f. The provider performs clinical laboratory tests or examinations, but it or its personnel do not meet CLIA, and the regulations adopted thereunder, and the state clinical laboratory law, do not possess valid CLIA certificates and clinical laboratory registrations or licenses pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code, or are not exempt from licensure as a clinical laboratory under Section 1241 of the Business and Professions Code.

g. The provider fails to possess either of the following:

(1) The appropriate licenses, permits, certificates, or other approvals needed to practice the profession or occupation, or provide the services, goods, supplies, or merchandise the provider identified in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted and for the location for which the application was submitted.

(2) The business or zoning permits or other approval necessary to operate a business at the location identified in its application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

h. The provider, or if the provider is a clinic, group, partnership, corporation, or other association, any officer, director, or shareholder with a 10 percent or greater interest in that organization, commits two or more violations of the federal or state statues or regulation governing the Medi-Cal program, and the violations demonstrate a pattern or practice of fraud, abuse, or provision of unnecessary or substandard medical services.

i. The provider commits any violation of a federal or state statute or regulation governing the Medi-Cal program or of a statute or regulation governing the provider's profession or occupation and the violation represents a threat of immediate jeopardy or significant harm to any Medi-Cal beneficiary or to the public welfare.

j. The provider submits claims for payment that subject a provider to suspension under Section 14043.61.

k. The provider submits claims for payment for services, goods, supplies, or merchandise rendered at a location other than the location for which the provider number was issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status was granted.

l. The provider has not paid its fine, or has a debt due and owing, including overpayments and penalty assessments, to any federal, state, or local government entity that relates to Medicare, Medicaid, Medi-Cal, or any other federal or state health care program, and has not made satisfactory arrangements to fulfill the obligation or otherwise been excused by legal process from fulfilling the obligation.

27. **Provider Suspension; Appeal Rights; Reinstatement.** Provider agrees that it is to be subject to the following suspension actions. Provider further agrees that the suspension of Provider shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment, either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the suspension.

a. **Automatic Suspensions/Mandatory Exclusions.** The provider shall be automatically suspended under the following circumstances:

(1) Upon notice from the Secretary of the United States Department of Health and Human Services that Provider has been excluded from participation in the Medicare or Medicaid programs. No administrative appeal of a suspension on this ground shall be available to Provider. (Welfare and Institutions Code, Section 14123(b),(c)).

(2) If Provider has license(s), certificate(s), or other approval(s) to provide health care services, revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that license, certificate, or approval was pending. (Welfare and Institutions Code, Section 14043.6).

(3) If Provider is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Suspension following conviction is not subject to the proceedings under Welfare and Institutions Code, Section 14123(c). However, the director may grant an informal hearing at the request of the provider to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension.

b. **Permissive Suspensions/Permissive Exclusions.** The provider may be suspended under the following circumstances:

(1) Provider violates any of the provisions of Chapter 7 of the Welfare and Institutions Code (commencing with Section 14000 except for Sections 14043–14044), or Chapter 8 (commencing with Section 14200) or any rule or regulations promulgated by DHCS pursuant to those provisions. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14123(a),(c)).

(2) Provider fails to comply with DHCS' request to examine or receive copies of the books and records pertaining to services rendered to Medi-Cal beneficiaries. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14124.2).

(3) Provider participating in the Medi-Cal dental program provides services, goods, supplies, or merchandise that are below or less than the standard of acceptable quality, as established by the California Dental Association Guidelines for the Assessment of Clinical Quality and Professional Performance, Copyright 1995, Third Edition, as periodically amended. (Welfare and Institutions Code, Section 14123(f)).

c. **Temporary Suspension.** The provider may be temporarily suspended under the following circumstances:

(1) Provider fails to disclose all information as required in federal Medicaid regulations or any other information required by DHCS, or discloses false information. Administrative appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.2(a)).

(2) If it is discovered that Provider is under investigation for fraud or abuse. Administrative appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.36(a)).

(3) Provider fails to remediate discrepancies discovered as a result of an unannounced visit to Provider. Administrative appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.7(c)).

(4) When necessary to protect the public welfare or the interests of the Medi-Cal program. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section14123(c)).

(5) Provider submits claims for payment under any provider number from an individual or entity that is suspended, excluded or otherwise ineligible. This includes a provider on the Suspended and Ineligible Provider List or any list published by the Office of the Inspector General or the Department of Health and Human Services. Appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.61).

28. **Provider Termination, Imposition of Federal Sanctions, and Appeal Rights for Long Term Care Facilities.** Provider agrees that it is subject to any federal sanctions authorized under the state plan including termination of this provider agreement in accordance with federal law. Provider further agrees that the termination of this provider agreement or imposition of other federal sanctions authorized under the state plan shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the termination or imposition of sanctions.

a. **Skilled Nursing Facility and Intermediate Care Facility Appeal Procedures.** SNF and ICF Medi-Cal Providers shall have the appeal rights set forth in Article 1.6 of Chapter 3 of Division 3 of Title 22.

b. **Intermediate Care Facilities-Mental Retardation Appeal Procedures.** Intermediate Care Facilities-Developmentally Disabled; Intermediate Care Facilities-Developmentally Disabled-Habilitative; Intermediate Care Facilities-Developmentally Disabled-Nursing shall have the appeal rights set forth in 42 CFR 431.153 and 431.154.

29. **Liability of Group Providers.** Provider agrees that, if it is a provider goup, the group, and each member of the group, are jointly and severally liable for any breach of this Agreement, and that action against any of the providers in the provider group may result in action against all of the members of the provider group.

30. **Legislative and Congressional Changes.** Provider agrees that this Agreement is subject to any future additional requirements, restrictions, limitations, or conditions enacted by the California Legislature or the United States Congress which may affect the provisions, terms, conditions, or funding of this Agreement in any manner.

31. **Provider Capacity.** Provider agrees that Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

32. **Indemnification.** Provider agrees to indemnify, defend, and save harmless the State of California, its officers, agents, and employees, from any and all claims and losses accruing or resulting to any and all persons, firms, or corporations furnishing or supplying services, materials, or supplies in connection with Provider's performance of this Agreement, and from any and all claims and losses accruing or resulting to any Medi-Cal beneficiary, or to any other person, firm, or corporation who may be injured or damaged by Provider in the performance of this Agreement.

33. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

34. **Venue.** Venue for all actions, including federal actions, concerning this Agreement, lies in Sacramento County, California, or in any other county in which the California Department of Justice maintains an office.

35. **Titles.** The titles of the provisions of this Agreement are for convenience and reference only and are not to be considered in interpreting this Agreement.

36. **Severability.** If one or more of the provisions of this Agreement shall be invalid, illegal, void, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. Either party having knowledge of such a provision shall promptly inform the other of the presumed nonapplicability of such provision. Should the nonapplicable provision go to the heart of this Agreement, the Agreement shall be terminated in a manner commensurate with the interests of both parties.

37. **Assignability.** Provider agrees that it has no property right in or to its status as a Provider in the Medi-Cal program or in or to the provider number(s) assigned to it, and that Provider may not assign its provider number for use as a Medi-Cal provider, or any rights and obligations it has under this Agreement except to the extent purchasing owner is joining this provider agreement with successor liability with joint and several liability.

38. **Waiver.** Any action or inaction by DHCS or any failure of DHCS on any occasion, to enforce any right or provision of this Agreement, shall not be interpreted to be a waiver by DHCS of its rights hereunder and shall not prevent DHCS from enforcing such provision or right on any future occasion. The rights and remedies of DHCS herein are cumulative and are in addition to any other rights or remedies that DHCS may have at law or in equity.

39. **Complete Integration.** This Agreement, including any attachments or documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of this Agreement.

40. **Amendment.** No alteration or variation of the terms or provisions of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement, and no oral understanding or agreement not set forth in this Agreement, shall be binding on the parties to this Agreement.

41. **Provider Attestation.** Provider agrees that all information it submits on the application form for enrollment, this Agreement, and all attachments or changes to either, is true, accurate, and complete to the best of Provider's knowledge and belief. Provider further agrees to sign the application form for enrollment, this Agreement, and all attachments or changes to either, under penalty of perjury under the laws of the State of California.

Provider agrees that compliance with the provisions of this agreement is a condition precedent to payment to provider.

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

1. Printed legal name of provider

2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in item 1 above)

3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor

4. Title of person signing this declaration

5. Notary Public (Affix notary seal or stamp in the space below)

Executed at: _____ (City), _____ (State) on _____ (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. **Contact Person's Information**

☐ Check here if you are the same person identified in item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last) (first) (middle) (gender) ☐ Male ☐ Female

Title/Position Email address Telephone Number

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a). The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

EXHIBIT 6

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 03/15/2019)

ST. VINCENT MEDICAL CENTER (NPI# 1124004304) (OSHPD# 106190762)

PHASE V						
FISCAL YEAR	CYCLE (PERIOD)	DUE DATE	AMOUNT DUE	AMOUNT PAID	WITHHELD	OUTSTANDING BALANCE
2016/17	CYCLE 1 (01/01/2017-03/31/2017)	2/5/2018	$2,967,293.00 -	$0.00 -	$2,967,293.00 =	$0.00
	CYCLE 2 (04/01/2017-06/30/2017)	2/28/2018	$2,967,293.00 -	$0.00 -	$2,967,293.00 =	$0.00
	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	$2,482,372.56 -	$2,482,372.56 -	$0.00 =	$0.00
2017/18	CYCLE 3 (07/01/2017-09/30/2017)	3/21/2018	$3,295,382.00 -	$0.00 -	$3,295,382.00 =	$0.00
	CYCLE 4 (10/01/2017-12/31/2017)	4/11/2018	$3,295,382.47 -	$0.00 -	$3,295,382.47 =	$0.00
	CYCLE 5 (01/01/2018-03/31/2018)	5/2/2018	$3,295,382.00 -	$0.00 -	$3,295,382.00 =	$0.00
	CYCLE 6 (04/01/2018-06/30/2018)	7/11/2018	$3,295,382.00 -	$0.00 -	$3,295,382.00 =	$0.00
	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	$2,560,919.99 -	$2,560,919.99 -	$0.00	$0.00
	Managed Care 2* (Directed) (07/01/2017-06/30/2018)	TBD	$2,575,439.74 -	$0.00 -	$0.00 =	$2,575,439.74
2018/19	CYCLE 7 (07/01/2018-09/30/2018)	10/3/2018	$3,433,071.00 -	$0.00 -	$537,551.92 =	$2,895,519.08
	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	$3,433,071.00 -	$0.00 -	$0.00 =	$3,433,071.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	$3,433,071.00 -	$0.00 -	$0.00 =	$3,433,071.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	$3,433,071.00 -	$0.00 -	$0.00 =	$3,433,071.00
	Managed Care 3* (Passthrough) (07/01/2018-06/30/2019)	TBD	$2,828,768.00 -	$0.00 -	$0.00 =	$2,828,768.00
	Managed Care 3* (Directed) (07/01/2018-06/30/2019)	TBD	$2,828,768.00 -	$0.00 -	$0.00 =	$2,828,768.00
Total Outstanding Balance						**$21,427,707.82**

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 03/15/2019)

ST. FRANCIS MEDICAL CENTER (NPI# 1487697215) (OSHPD# 106190754)

PHASE V

FISCAL YEAR	CYCLE (PERIOD)	DUE DATE	AMOUNT DUE	AMOUNT PAID	WITHHELD	OUTSTANDING BALANCE
2016/17	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	$5,256,386.70	- $5,256,386.70	- $0.00 =	$0.00
2017/18	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	$5,324,520.88	- $5,324,520.88	- $0.00 =	$0.00
2018/19	Managed Care 2* (Directed) (07/01/2017-06/30/2018)	TBD	$5,354,709.53	- $0.00	- $0.00 =	$5,354,709.53
	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	$6,703,466.00	- $0.00	- $6,703,466.00 =	$0.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	$6,703,466.00	- $0.00	- $0.00 =	$6,703,466.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	$6,703,466.00	- $0.00	- $0.00 =	$6,703,466.00
	Managed Care 3* (Passthrough) (07/01/2018-06/30/2019)	TBD	$5,810,064.00	- $0.00	- $0.00 =	$5,810,064.00
	Managed Care 3* (Directed) (07/01/2018-06/30/2019)	TBD	$5,810,064.00	- $0.00	- $0.00 =	$5,810,064.00
Total Outstanding Balance						**$30,381,769.53**

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

SETON MEDICAL CENTER (NPI# 1154428688) (OSHPD# 106410817)							
	PHASE V						
FISCAL YEAR	CYCLE (PERIOD)	DUE DATE	AMOUNT DUE	AMOUNT PAID	WITHHELD		OUSTANDING BALANCE
2016/17	CYCLE 1 (01/01/2017-03/31/2017)	2/5/2018	$2,040,467.00	- $0.00	- $17,061.40	=	$2,023,405.60
	CYCLE 2 (04/01/2017-06/30/2017)	2/28/2018	$2,040,467.00	- $0.00	- $0.00	=	$2,040,467.00
	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	$1,870,925.10	- $1,870,925.10	- $0.00	=	$0.00
2017/18	CYCLE 3 (07/01/2017-09/30/2017)	3/21/2018	$2,223,369.00	- $0.00	- $0.00	=	$2,223,369.00
	CYCLE 4 (10/01/2017-12/31/2017)	4/11/2018	$2,223,368.94	- $0.00	- $0.00	=	$2,223,368.94
	CYCLE 5 (01/01/2018-03/31/2018)	5/2/2018	$2,223,369.00	- $0.00	- $0.00	=	$2,223,369.00
	CYCLE 6 (04/01/2018-06/30/2018)	7/11/2018	$2,223,369.00	- $0.00	- $0.00	=	$2,223,369.00
	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	$1,893,251.67	- $1,893,251.67	- $0.00	=	$0.00
	Managed Care 2* (Directed) (07/01/2017-06/30/2018)	TBD	$1,903,985.91	- $0.00	- $0.00	=	$1,903,985.91
2018/19	CYCLE 7 (07/01/2018-09/30/2018)	10/3/2018	$2,293,835.00	- $0.00	- $0.00	=	$2,293,835.00
	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	$2,293,835.00	- $0.00	- $0.00	=	$2,293,835.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	$2,293,835.00	- $0.00	- $0.00	=	$2,293,835.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	$2,293,835.00	- $0.00	- $0.00	=	$2,293,835.00
	Managed Care 3* (Passthrough) (07/01/2018-06/30/2019)	TBD	$2,061,897.50	- $0.00	- $0.00	=	$2,061,897.50
	Managed Care 3* (Directed) (07/01/2018-06/30/2019)	TBD	$2,061,897.50	- $0.00	- $0.00	=	$2,061,897.50
Total Outstanding Balance							$28,160,469.45

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

Exhibit H

Exhibit H

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

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
☐ 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. 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

Hon. Judge Ernest M. Robles

DEBTORS' MEMORANDUM IN SUPPORT OF ENTRY OF AN ORDER: (A) AUTHORIZING THE SALE OF PROPERTY FREE AND CLEAR OF ALL CLAIMS, LIENS AND ENCUMBRANCES; (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C) GRANTING RELATED RELIEF

Hearing:
Date: April 17, 2019
Time: 10:00 am
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

TABLE OF CONTENTS

		Page
I.	STATEMENT OF FACTS	1
	A. The Bid Procedures Order	1
	B. Marketing Efforts	2
	C. The Principal Terms of the SGM APA	4
II.	ARGUMENT	10
	A. The Court Should Authorize The Debtors To Sell The Purchased Assets To SGM In Accordance With The Terms Of The APA.	10
	1. Sound Business Purpose.	11
	2. Accurate and Reasonable Notice	12
	3. Fair and Reasonable Price.	13
	4. Good Faith.	14
	B. Section 363(f) Permits the Debtors' Sale of the Purchased Assets to SGM to Be Free and Clear of Any and All Interests and Liens.	15
	1. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. § 363(f)(2).	16
	2. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. § 363(f)(3).	18
	3. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. § 363(f)(5).	18
	C. The Court Should Authorize the Debtors to Assume and Assign to SGM All of the Assumed Contracts that SGM Designates.	20
	D. Potential Disputes Regarding Assignment of Certain Agreements to SGM	22
	E. The Court Should Waive the Fourteen-Day Waiting Periods Set Forth in Bankruptcy Rules 6004(h) and 6006(d).	22
III.	CONCLUSION	22

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

TABLE OF AUTHORITIES

Page(s)

Cases

In re Abbotts Dairies of Pa., Inc.,
788 F.2d 143 (3d Cir. 1986).....9, 13, 14

In re AEG Acquisition Corp.,
127 B.R. 34 (Bankr. C.D. Cal. 1991), *aff'd* 161 B.R. 50 (B.A.P. 9th Cir. 1993) 19

In re Alpha Indus., Inc.,
84 B.R. 703 (Bankr. D. Mont. 1988) 14

In re Apex Oil Co.,
92 B.R. 847 (Bankr. E.D. Mo. 1988).....14

In re Atlanta Packaging Prods., *Inc.*,
99 B.R. 124 (Bankr. N.D. Ga. 1988) 13

In re Bowman,
194 B.R. 227 (Bankr. D. Ariz. 1995*)*.....19

In re Central Fla. Metal Fabrication, Inc.,
190 B.R. 119 (Bankr. N.D. Fla. 1995).....18

Coastal Indus., Inc. v. U.S. Internal Revenue Serv. (In re Coastal Indus., Inc.),
63 B.R. 361 (Bankr. N.D. Ohio 1986).....12

Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.),
722 F.2d 1063 (2d Cir. 1983).....9, 10

In re Continental Airlines, Inc.,
780 F.2d 1223 (5th Cir. 1986).....10

In re Continental Country Club, Inc.,
114 B.R. 763 (Bankr. M.D. Fla. 1990) 18

In re Delaware and Hudson Ry. Co.,
124 B.R. 169 (D. Del. 1991).....9, 12

In re Embers 86th Street. Inc.,
184 B.R. 892 (Bankr. S.D.N.Y. 1995).....19

In re Exennium, Inc.,
715 F.2d 1401 (9th Cir. 1983).....14

In re Filtercorp, Inc.,
163 F.3d 570 (9th Cir. 1998).....14

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV,
209 F.3d 252 (3d Cir. 2000).....15

In re Gardens Regional Hospital and Medical Center, Inc.,
567 B.R. 802 (Bankr. C.D. Cal 2017).....9, 10, 15

In re Grand Slam U.S.A., Inc.,
178 B.R. 460 (E.D. Mich. 1995).....17

In re Grumman Indus., Inc.,
467 B.R. 694 (S.D.N.Y. 2012).....14

In re Gucci,
193 B.R. 411 (S.D.N.Y. 1996).....18

In re Gulf States Steel, Inc. of Alabama,
285 B.R. 497 (Bankr. N.D. Ala. 2002).....17

In re Healthco Int'l Inc.,
174 B.R. 174 (Bankr. D. Mass. 1994).....17

In re Hunt Energy Co., Inc.,
48 B.R. 472 (Bankr. N.D. Ohio 1985).....17

In re Huntington, Ltd.,
654 F.2d 578 (9th Cir. 1981).....9

In *re Integrated Resources, Inc.*,
135 B.R. 746 (Bankr. S.D.N.Y. 1992), *aff'd*, 147 B.R. 650 (S.D.N.Y. 1992).....13

In re Indus. Valley Refrig. and Air Cond. Supplies, Inc.,
77 B.R. 15 (Bankr. E.D. Pa. 1987).....13

In re Karpe,
84 B.R. 926 (Bankr. M.D. Pa. 1988).....12

In re Klein Sleep Prods, Inc.,
78 F.3d 18 (2d. Cir. 1996).....18

Lubrizol Enterprises v. Richmond Metal Finishers,
756 F.2d 1043 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).....19

In re M Capital Corp.,
290 B.R. 743 (B.A.P. 9th Cir. 2003).....14

In re Martin (Myers v. Martin),
91 F.3d 389 (3d Cir. 1996).....9

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

In re La Paloma Generating, Co.,
2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017) 15

Mass. Dep't of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.),
484 B.R. 860 (1st Cir. BAP 2013) 15

P.K.R. Convalescent Ctrs., Inc. v. Commonwealth of Va., Dep't of Med. Assistance Serv. (In re P.K.R. Convalescent Ctrs., Inc.),
189 B.R. 90 (Bankr. E.D. Va. 1995) 16

In re Perroncello,
170 B.R. 189 (Bankr. D. Mass. 1994) 17

In re Prime Motors Inns,
124 B.R. 378 (Bankr. S.D. Fla. 1991) 18

In re PW, LLC,
391 B.R. 25 (B.A.P. 9th Cir. 2008) 17

In re Rock Indus. Mach. Corp.,
572 F.2d 1195 (7th Cir. 1978) 14

In re Sandy Ridge Dev. Corp.,
881 F.2d 1346 (5th Cir. 1989) 17

Scherer v. Fed. Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.),
159 B.R. 821 (Bankr. N.D. Ill. 1993) 17

In re Schipper (Fulton State Bank v. Schipper),
933 F.2d 513 (7th Cir. 1991) 9

In re Shary,
152 B.R. 724 (Bankr. N.D. Ohio 1993) 15

In re Trans World Airlines, Inc.,
322 F.3d 283, 285, 288 (3d Cir. 2001) 15

Titusville Country Club v. Pennbank (In re Titusville Country Club),
128 B.R. 396 (Bankr. W.D. Pa. 1991) 9

United Mine Workers of Am. Combined Benefit Fund v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.),
99 F.3d 573 (2012) 15

In re Walter,
83 B.R. 14 (9th Cir. B.A.P. 1988) 9, 10

In re Wilde Horse Enterprises,
136 B.R. 830 (Bankr. C.D. Cal. 1991) 13, 14

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

Statutes

11 U.S.C.
§ 101 et. seq. 9
§ 363 ....2, 11
§ 363(b) 9, 10, 11, 12
§ 363(b)(1) 13
§ 363(f) 14, 15, 16
§ 363(f)(1)-(5) 15
§ 363(f)(2) 15
§ 363(f)(3) 16, 17
§ 363(f)(5) 16, 17, 18
§ 363(m) 8, 14
§ 365 8
§ 365(a) 18
§ 365(b)(1) 19
§ 365(b)(1)(A) 20
§ 365(f)(1) 19
§ 365(f)(2) 19
§ 503(b) 8
§ 506(a) 18
§ 1107 1
§ 1107(a) 18
§ 1108 1
§ 1113 20
§ 1129 13
§ 1129(a)(3)-(b)(1) 17
§ 1129(b)(1) 17
§ 1129(b)(1) 17
§ 1129(b)(2) 17
§ 1129(b)(2)(A) 17, 18
§ 1129(b)(2)(A)(i)(II) 17
§ 1129(b)(2)(A)(iii) 17

Rules and Regulations

Federal Rules of Bankruptcy Procedure
Rule 2002 12
Rule 6004(a) 12
Rule 6004(a)(c) 12
Rule 6004(c) 12
Rule 6004(h) 21
Rule 6004(h) 21
Rule 6006(d) 21
Rule 6006(d) 21

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

MEMORANDUM

Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy case (collectively, the "Debtors"), hereby file this Memorandum in support of the entry of an order of the Court (the "Sale Order") approving the sale of four of the Debtors' hospitals (collectively, the "Hospitals") and related assets (the "Assets"), including, St. Francis Medical Center, a California nonprofit public benefit corporation ("St. Francis Medical Center"), St. Vincent Medical Center, a California nonprofit public benefit corporation ("St. Vincent Medical Center"), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation ("St. Vincent Dialysis Center"), and Seton Medical Center, a California nonprofit public benefit corporation ("Seton Medical Center"), to Strategic Global Management, Inc., a California corporation ("SGM" or the "Stalking Horse Purchaser"), in accordance with the terms of the Asset Purchase Agreement ("APA"), attached as Exhibit "A" to the Sale and Bidding Procedures Motion (as defined below). In connection therewith, the Debtors also seek the Court's approval of the Debtors' assumption and assignment to SGM of those unexpired leases and executory contracts that SGM wishes to assume and have assigned to it (defined in the APA as the "Assumed Contracts"). For all of the reasons set forth herein and those in the Sale and Bidding Procedures Motion, the Debtors respectfully request that the Court enter the Sale Order.

I. STATEMENT OF FACTS

A. General Background And The Bid Procedures Order.

1. On August 31, 2018, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the Bankruptcy Code (the "Petition Date").[1] Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. On January 17, 2019, the Debtors filed the *Notice Of Motion And Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse*

[1] All references to § herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101-1532; all references to "Bankruptcy Rules" are to provisions of the Federal Rules of Bankruptcy Procedure.

Bidder And For Prospective Overbidders To Use, (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 (the "Sale and Bidding Procedures Motion") [Docket No. 1279].

3. On February 19, 2019, the Court held a hearing on the Sale and Bidding Procedures Motion and thereafter entered an order approving the Sale and Bidding Procedures Motion (the "Bidding Procedures Order")[2] [Docket No. 1572]. SGM served as the Stalking Horse Purchaser, and the Bidding Procedures Order approved the APA, as modified therein.

4. The Bidding Procedures Order established a deadline of March 28, 2019, at 4:00 p.m. (PST), for bidders to submit partial bids for the Assets, and a deadline of April 3, 2019, at 4:00 p.m. (PST), to submit full bids for the Assets (each a "Bid Deadline"). The Partial Bid Auction was scheduled to take place on April 8, 2018, and the Full Bid Auction was scheduled to take place on April 9, 2019.

B. Marketing Efforts & Results Thereof

5. In June 2018, the Debtors engaged Cain Brothers, a division of KeyBanc Capital Markets ("Cain"), to identify potential buyers of some or all of the Verity hospitals and related assets and commenced discussions with those potential buyers. Cain prepared a Confidential Investment Memorandum and organized an online data site to share information with potential buyers and contacted over 181 strategic and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction regarding the Debtors hospitals. As a result of its broad marketing process, Cain received sixteen indications of interest or other proposals, and continued to develop potential sales.

[2] Unless otherwise defined, all capitalized terms used herein shall have the meaning ascribed to them in the Bidding Procedures Order.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

6. The Debtors, in consultation with Cain and its other advisors, selected SGM's offer to serve as the stalking-horse bid to acquire the Assets through a sale under § 363. The APA was the result of extensive negotiations between the Debtors and SGM. As set forth below, under the APA, SGM submitted a stalking-horse bid to purchase the Assets for $610 million ($420 million allocated to St. Francis Medical Center, $120 million allocated to St. Vincent Medical Center and $70 million allocated to Seton Medical Center and Seton Coastside combined), plus payments of cure costs, as set forth therein.

7. Thereafter, in accordance with the bidding procedures, Cain continued to actively market the Assets. As a part of this process, Cain vigilantly monitored interest and continued to communicate with parties that had expressed interest and that Cain had identified as potential bidders, either as partial or aggregate bidders. Cain's marketing process was meant to identify and shepherd any bidders who could contribute to a competitive auction. Cain notified 90 parties that had previously sent a Non-Disclosure Agreements ("NDA") of the sale process, directly sent these parties the approved Bidding Procedures and represented Cain's availability to assist in the bidding process. Thereafter, sixteen parties who executed NDAs requested continued access to the data room containing information about the Assets. Cain continued to populate the data room it had opened with new and relevant information as it became available.

8. On the applicable Bid Deadlines, the Debtors received two partial bids and one full system bid. Thereafter, the Debtors consulted with the Consultation Parties regarding the bids received and deemed the two partial bids Qualified Full Bids (one for St. Vincent Medical Center and one for St. Francis Medical Center). There was not a full system Qualified Bid.[3] After consultation with the Consultation Parties, the Debtors determined not to conduct either a Partial Bid Auction or Full Bid Auction, as set forth in the *Notice That No Auction Shall Be Held Re Debtors' Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase*

[3] The Debtors received a letter from Prime Healthcare describing a potential partial bid for St. Francis and another letter from Prime Healthcare describing a potential full bid. In both instances, Prime expressly stated that it "recognize[d] that this bid will not be formally considered at auction" and did not include the mandatory good faith deposit, but was submitted solely "for reference, when needed when there is no credible back up bidder or all other bidders are unable to close."

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Agreement for Stalking Horse Bidder and for Prospective 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. 2053] (the "No-Auction Notice").

9. Accordingly, SGM was named the Successful Bidder for the Assets under the Bidding Procedures Order. *See* Bidding Procedures Order, Exhibit "1," at 6; *see also* No-Auction Notice, at 2.

C. The Principal Terms of the SGM APA[4]

10. The primary terms of the APA are set forth below:[5]

Stalking Horse APA Provision	Summary Description
APA Parties	Verity Health System of California, Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center ("Sellers"). Strategic Global Management, Inc. ("Purchaser").
Consideration **APA § 1.1**	Six Hundred Ten Million Dollars ($610,000,000), which shall be allocated as follows: Four Hundred Twenty Million Dollars ($420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars ($120,000,000) to St. Vincent Medical Center and Seventy Million Dollars ($70,000,000) to Seton Medical Center for Seton Medical Center and Seton Coastside, plus assumption of the Assumed Liabilities, provided, that if the California Attorney General's approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastside Hospital remain open as a skilled nursing facility, then an amount to be determined by Purchaser, in its sole discretion, of such Cash Consideration

[4] The following is a summary of the terms of the APA. In the event of any inconsistencies between the provisions of the APA and the summary set forth herein, the terms of the APA shall govern.

[5] The summary of the terms contained in this Memorandum highlights some of the material terms of the APA. This summary is qualified in its entirety by reference to the provisions of the APA. In the event of any inconsistencies between the provisions of the APA and the summary set forth herein, the terms of the APA shall govern. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings ascribed to them in the APA.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Stalking Horse APA Provision	Summary Description
	shall be re-allocated from St. Francis to Seton; plus payment of Cure Costs associated with any Assumed Leases and/or Assumed Contracts.
QAF Adjustment **APA § 1.1(c), 1.1(d)**	At Closing, Sellers shall credit against the cash consideration, the amount by which payments received by Sellers under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the "Net QAF Reduction Amount"), or Purchaser shall pay Sellers (as an increase to the cash consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the "Net QAF Increase Amount").
Assets; Avoidance Actions **APA § 1.7**	In each case, solely to the extent used primarily in the conduct of the Business, "Assets" shall mean (a) all of the tangible personal property owned by such Seller and used by such Seller in the operation of the Hospital of such Seller, or in the case of St. Vincent Dialysis Center, the operation of its dialysis business, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements; (b) all of such Seller's rights, to the extent assignable or transferable, in and to all Licenses; (c) all of such Seller's right, title and interest in and to the Owned Real Property and all of such Seller's interest, to the extent assignable or transferable, in and to the Assumed Leases; (d) all of such Seller's right, title and interest in and to any and all Assumed Contracts; (e) all claims, rights, interests and proceeds with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time, except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases; (f) all Inventory; (g) all Prepaids; (h) all operating manuals, files and computer software, including all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications and medical and administrative libraries; (i) all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation; (j) all Measure B trauma funding received after the Signing Date; (k) all Accounts Receivable; (l) all rights, claims and causes of action of such Seller arising out of the Accounts Receivable acquired by Purchase; (m) all regulatory settlements, rebates, adjustments, refunds or group appeals; (n) all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets; (o) all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement; (p) all transferable unclaimed property of any Person in Sellers' possession as of the Closing Date; (q) all warranties in favor of the Hospitals or Sellers; (r) certain intellectual property rights, as further described in the Transition Services Agreement; (s) all goodwill; (t) all rights and interest in the telephone and facsimile numbers and uniform resource locaters; (u) all Medicare and Medi-Cal provider agreements and lockbox accounts identified

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Stalking Horse APA Provision	Summary Description
	on Schedule 1.7(u) to the Stalking Horse APA; (v) all documents, records, correspondence, work papers and other documents, other than patient records, relating to the Accounts Receivable; (w) the Purchased Verity Holdings Assets; (x) except for the Excluded Assets, any other asset owned by the Seller; (y) all of Seton's interest in and to the PACE Obligations; and (z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).
Excluded Assets **APA § 1.8**	"Excluded Assets" include cash, cash equivalents and investments; all Seller Plans and the assets of all Seller Plans; all contracts and leases that are not Assumed Contracts or Assumed Leases; inventory and assets disposed of by any Seller in the ordinary course of business after the Signing Date but prior to the Effective Time; all claims, counterclaims, and causes of action of each Seller or each Seller's bankruptcy estate; (except as otherwise provided) all insurance policies and contracts and coverages obtained by any Seller or listing a Seller as insured party, a beneficiary or loss payee; all Utility Deposits; all bank accounts of each Seller (except as otherwise provided); all tax refunds of each Seller; all QAF IV and QAF V payments actually received prior to the Signing Date.
Assumed Obligations **APA § 1.9**	"Assumed Obligations" include all Assumed Contracts and Assumed Leases and all liabilities and obligations arising thereunder on and after the Effective Time, including any related Cure Costs; all liabilities and obligations arising out of or relating to any act, omission, event, or occurrence connected with the use, ownership, or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time; all unpaid real and personal property taxes that are attributable to the Assets after the Effective Time, subject to prorations; and all liabilities and obligations arising on or following the Effective Time relating to utilities being furnished to the Assets, subject to prorations and all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii).
Excluded Liabilities **APA § 1.10**	Purchaser shall not assume or become responsible for any duties, obligations, or liabilities of any Seller other than the Assumed Obligations.
Assumption of Transferred Contracts and Assignment **APA § 1.11**	Not later than seven (7) days prior to the date of the Auction (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser, and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the "Rejected Contracts"). Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser are entered, and (y) rejecting the Rejected Contracts are entered. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Stalking Horse APA Provision	Summary Description
	shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement. At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.
Good Faith Deposit **APA § 1.2**	Purchaser has made a good faith deposit in the amount of Thirty Million Dollars ($30,000,000.00) (the "Deposit") by wire transfers to an account designated by Sellers. The Deposit shall be non-refundable in all events, except in the event Purchaser is not the winning bidder at the Auction, in the event Purchaser terminates the Stalking Horse APA if a stay of the sale order has not been vacated on or before 180 days following issuance of such stay, or in the event Purchaser has terminated the Stalking Horse APA pursuant to Section 9.1 (other than Section 9.1(b)). Upon Closing, the Deposit will be credited against the Purchase Price.
Closing Date **APA § 1.3**	The Closing Date shall occur within ten (10) business days following the satisfaction or waiver of the conditions precedent to Closing set forth in Articles 7 and 8 of the Stalking Horse APA.
Employment Provisions **APA § 5.3**	Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all employees (the "Hospital Employees") who, immediately prior to the Effective Time are: (i) employees of either Seller; (ii) employees of any affiliate of either Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of either Seller and are listed on Schedule 5.3. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the "Hired Employees." All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.
Payment of Cure Costs **APA § 5.8**	Purchaser, upon assumption, shall pay the Cure Costs for each Assumed Contract and Assumed Lease so that each such Assumed Contract and Assumed Lease may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code.
Break-Up Fee and Minimum Bid **APA § 6.1**	Any full overbids must be in a minimum amount of Six Hundred Ten Million Dollars ($610,000,000.00), plus Cure Costs and the Break-Up Fee, and accompanied by a deposit in the form of cash or a cashier's check in the amount of Thirty Million Dollars ($30,000,000.00). The "Break-Up Fee" shall mean a breakup fee in the amount totaling three and a half percent (3.5%) of the Cash Consideration (or $21,350,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed $2,000,000.00; provided, however, that in the event that the Purchaser is successful in acquiring some but not all of the Assets,

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Stalking Horse APA Provision	Summary Description
	the Break-Up Fee shall be reduced pro rata to the percentage of Assets actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i) of the Stalking Horse APA. The Break-Up Fee will be subject to Bankruptcy Court approval and shall be deemed to be an allowed expense of the kind specified in § 503(b) of the Bankruptcy Code to be paid solely from the proceeds of an alternate transaction, pursuant to the Sale Order. Purchaser shall be allowed to credit bid the Break-Up Fee in any overbids that Purchaser may elect to make with respect to the Assets.
Requested Findings as to Good Faith, **APA § 6.1**	Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to § 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.
Buyer's Termination Rights **APA § 9.1**	The Stalking Horse APA may be terminated by Purchaser if it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to the Stalking Horse APA, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under Section 9.1(c) on or prior to January 8, 2019 [which period has expired], by Purchaser if a material breach of the Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser and by Purchaser or Sellers or if the Closing has not occurred on or before December 31, 2019. The Stalking Horse APA may also be terminated by Purchaser if satisfaction of any condition in Article 8 has not occurred by December 31, 2019 or becomes impossible and Purchaser has not waived such condition in writing. The Stalking Horse APA may also be terminated by Purchaser if the Bankruptcy Court enters an order dismissing the Bankruptcy Case or fails to approve the sale of the Assets to Purchaser.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Stalking Horse APA Provision	Summary Description
Record Retention **APA § 10.2**	From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the "Document Retention Period"), Purchaser shall keep and preserve all medical records, patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents, Purchaser shall provide written notice to Sellers of Purchaser's intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal.
Limitation on Liability **APA § 11.1**	If Purchaser commits any material default under the APA, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed $60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under the APA.

D. Notices & Objections Related to Cure Amounts

11. On March 5, 2019, the Debtors filed the *Notice To Counterparties To Executory Contracts And Unexpired Leases Of The Debtors That May Be Assumed And Assigned* listing all of the known executory contracts and unexpired leases and related cure amounts (the "Cure Notice") [Docket No. 1704]. A supplement to the Cure Notice (adding and removing some agreements and revising Cure Amounts) was later filed on March 18, 2019 [Docket No. 1836].

12. On March 18, 2019, the Debtors filed their *Supplemental Re Notice To Counterparties To Executory Contracts and Unexpired Leases of The Debtors That May Be Assumed and Assigned* [Docket No. 1836]. On April 5, 2019, the Debtors filed their *Second Supplemental Notice Re Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 2065].

13. Since the Cure Notice, counterparties to executory contracts and unexpired leases have filed objections regarding the cure amounts and other issues [Docket Nos. 1788; 1804; 1819; 1830; 1849; 1850; 1853; 1853; 1856-1858; 1863; 1866; 1869; 1870; 1873-1877; 1881; 1882; 1890; 1891;1892; 1904; 1926; 1930; 1933; 1946; 1948; 1949; 1953; 1954; 1965; 2058; 2066; 2108].

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

14. The Debtors have entered into the multiple stipulations to provide the Debtors and counterparties time to resolve the cure issues informally. *See*, e.g., Docket Nos. 1871; 1950.

II. ARGUMENT

A. The Court Should Authorize The Debtors To Sell The Assets To SGM In Accordance With The Terms Of The APA.

Section 363(b) provides that a debtor "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the state." 11 U.S.C. § 363(b). To approve a use, sale or lease of property other than in the ordinary course of business, the Court must find "some articulated business justification." *See, e.g., In re Gardens Regional Hospital and Medical Center, Inc.* ("*In re Gardens*"), 567 B.R. 802, 825 (Bankr. C.D. Cal. 2017); *In re Martin (Myers v. Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (*citing In re Schipper (Fulton State Bank v. Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Pa., Inc*., 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the "sound business judgment" test of *Lionel Corp.* and requiring good faith); *In re Delaware and Hudson Ry. Co*., 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the "sound business judgment" test in the *Abbotts Dairies* decision). Similarly, in the Ninth Circuit, "cause" exists for authorizing a sale of estate assets if it is in the best interest of the estate, and a business justification exists for authorizing the sale. *In re Huntington, Ltd*., 654 F.2d 578 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. B.A.P. 1988).

In determining whether a sale satisfies the business judgment standard, courts have held that: (1) there be a sound business reason for the sale; (2) accurate and reasonable notice of the sale be given to interested persons; (3) the sale yield an adequate price (*i.e*., one that is fair and reasonable); and (4) the parties to the sale have acted in good faith. *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *see also In re Walter*, 83 B.R. at 19-20.

The Debtors submit that their proposed sale of the Assets to SGM clearly satisfied each of these four criteria, is consistent with the terms of the APA, and demonstrates that the Debtors'

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

business judgment to proceed with the proposed sale of the Assets to SGM in accordance with the terms of the APA is sound.

1. Sound Business Purpose.

There must be some articulated business justification, other than appeasement of major creditors, for using, selling or leasing property out of the ordinary course of business before the bankruptcy court may order such disposition under § 363(b). *In re Gardens*, 567 B.R. at 825; *In re Lionel Corp*., 722 F.2d at 1070. The court in *In re Walter*, established a flexible case-by-case test to determine whether the business purpose for a proposed sale justifies disposition of property of the estate under § 363(b). 83 B.R. at 19. In *Walter*, the court, adopting the reasoning of the Fifth Circuit in *In re Continental Airlines, Inc*., 780 F.2d 1223 (5th Cir. 1986) and the Second Circuit *in In re Lionel Corp., supra*, articulated the standard to be applied under § 363(b) as follows:

> Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the Debtor, creditors and equity holders, alike. He might, for example, look to such relevant facts as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

In re Walter, 83 B.R. at 19-20 (*citing In re Continental Air Lines, Inc*., 780 F.2d at 1226).

The facts pertaining to the Debtors' proposed sale of the Assets to SGM substantiate the Debtors' business decision that such contemplated sale serves the best interests of the Debtors' estates, their creditors and shareholders and merits the approval of the Court. The Debtors incur significant operational losses at their Hospitals, and continued operations are simply not financially viable. *See Declaration of Richard Adcock in Support of Emergency First-Day Motions*, at ¶ 95 [Docket No. 8]. Thus, the Debtors' Board of Directors concluded that the best course of action to preserve the Debtors' Hospitals as going concerns, serve the charitable mission of the Debtors and

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

the original legacy of the Daughters of Charity, preserve jobs and maximize the recovery for creditors, was to sell the Debtors' Hospitals, as going concerns, in a bankruptcy court supervised sale and have pursued this objective throughout these cases. *Id.* ¶ 96.

As discussed *supra*, the Debtors engaged in a comprehensive marketing process to sell the Assets prior to and during the bankruptcy case for a period of more than ten months. The Debtors are confident that their proposed asset sale to SGM is the best option available to the Debtors to, among other things, maximize the value of the Assets and recovery for their creditors. Despite Cain's vigorous attempts to market the Assets, SGM's stalking-horse bid was the highest, best and only Qualified Full Bid the Debtors received for all four Hospitals. The Debtors believe that SGM's offer represents a fair market value for the assets. Also, SGM is a buyer who will maintain the healthcare characteristics of all four Hospitals, continuing patient care for the communities served by the Hospitals and continuing to provide employment for the Debtors' employees. Therefore, the Debtors submit that their proposed asset sale is justified by sound business purposes, satisfying the first requirement for a sale under § 363(b).

2. Accurate and Reasonable Notice

In connection with a proposed sale under § 363, "four pieces of information must be presented to the creditors. The notice should: place all parties on notice that the debtor is selling its business; disclose accurately the full terms of the sale; explain the effect of the sale as terminating the debtor's ability to continue in business; and explain why the proposed price is reasonable and why the sale is in the best interest of the estate." *In re Delaware*, 124 B.R. at 180. A notice is sufficient if it includes the terms and conditions of the sale and if it states the time for filing objections. *In re Karpe*, 84 B.R. 926, 930 (Bankr. M.D. Pa. 1988). The purpose of the notice is to provide an opportunity for objections and hearing before the court if there are objections. *Id.*

On February 20, 2019, the Debtors served a *Notice of Sale Procedures, Auction Date and Sale Hearing* [Docket. No. 729] on the following parties: (i) the Office of the United States Trustee; (ii) counsel to the Committee of Unsecured Creditors; (iii) any parties requesting notices in this case pursuant to Bankruptcy Rule 2002; (iv) all Potential Bidders; (i) all parties known by the Debtors to assert a lien on any of the Assets; (vi) all persons known or reasonably believed to have

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

asserted an interest in any of the Assets; (vii) all non-Debtor parties to any contracts and leases to be assumed; (viii) the Office of the United States Attorney for the Central District of California; (ix) the Office of the California Attorney General; (x) the Office of the California Secretary of State; (xi) all taxing authorities having jurisdiction over any of the Assets, including the IRS; and (xii) all environmental authorities having jurisdiction over any of the Assets. (*See* Certificate of Service [Docket No. 1997]). Also, as explained above, the Bidding Procedures Order was entered by the Court and has been provided to all known prospective bidders by Cain. The Debtors will also serve this Memorandum on the same parties in advance of the Sale Hearing.

The Debtors submit that the foregoing satisfies the requirements of Bankruptcy Rules 6004(a) and (c), which provide as follows:

> (a) ... Notice of a proposed ... sale ... of property ... not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2),(c)(1),(i) and (k) ... (c) ... A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice required by subdivision (a) of this rule shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession..."

Fed. R. Bankr. P. 6004(a)(c).

3. Fair and Reasonable Price.

In order to be approved under § 363(b), the purchase price must be fair and reasonable. *Coastal Indus., Inc. v. U.S. Internal Revenue Serv. (In re Coastal Indus., Inc.)*, 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986). However, the Debtors also realize that "[their] main responsibility, and the primary concern of the bankruptcy court, is the maximization of the value of the asset sold." In *re Integrated Resources, Inc*., 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992), *aff'd*, 147 B.R. 650 (S.D.N.Y. 1992). "It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." *In re Atlanta Packaging Prods.*, *Inc*., 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988); *see also In re Wilde Horse Enterprises*, 136 B.R. 830, 841 (Bankr.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

C.D. Cal. 1991) ("In any sale of estate assets, the ultimate purpose is to obtain the highest price for the property sold").

The marketing and sale process undertaken by Cain and the Debtors was designed to insure that the highest price and greatest benefit possible was obtained for the Assets. Cain robustly marketed the assets since July 2018, and these same assets had been fully marketed in 2014-2015 while under control of the Daughters of Charity. SGM's offer to purchase the Assets for $610 million (plus cure costs) represents the fair market value for the Assets and will provide a substantial benefit to the Debtors' estates. Accordingly, the Court should find that the sale price to SGM is fair and reasonable.

4. Good Faith.

When a bankruptcy court authorizes a sale of assets pursuant to § 363(b)(1), it is required to make a finding with respect to the "good faith" of the purchaser. *In re Abbotts Dairies*, 788 F.2d at 149. Such a procedure ensures that § 363(b)(1) will not be employed to circumvent the creditor protections of chapter 11, and as such, it mirrors the requirement of § 1129, that the Court independently scrutinizes the debtor's reorganization plan and makes a finding that it has been proposed in good faith. *Id*. at 150.

"Good faith" encompasses fair value, and further speaks to the integrity of the transaction. *In re Wilde Horse Enters.*, 136 B.R. at 842. With respect to the Debtors' conduct in conjunction with the sale, the good faith requirement "focuses principally on the element of special treatment of the Debtors' insiders in the sale transaction." *See In re Indus. Valley Refrig. and Air Cond. Supplies, Inc*., 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987). With respect to the buyer's conduct, this Court should consider whether there is any evidence of "fraud, collusion between the purchaser and other bidders or the [debtor], or an attempt to take grossly unfair advantage of other bidders." *In re Abbotts Dairies*, 788 F.2d at 147; *In re Rock Indus. Mach. Corp*., 572 F.2d 1195, 1198 (7th Cir. 1978); *In re Wilde Horse Enters., Inc*., 136 B.R. at 842; *In re Alpha Indus., Inc*., 84 B.R. 703, 706 (Bankr. D. Mont. 1988). In short, "[l]ack of good faith is generally determined by fraudulent conduct during the sale proceedings." *In re Apex Oil Co*., 92 B.R. 847, 869 (Bankr. E.D. Mo. 1988)

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

(*citing In re Exennium, Inc*., 715 F.2d 1401, 1404-05 (9th Cir. 1983)); *see also In re M Capital Corp*., 290 B.R. 743 (B.A.P. 9th Cir. 2003).

In *In re Filtercorp, Inc*., 163 F.3d 570 (9th Cir. 1998), the Ninth Circuit set forth the following test for determining whether a buyer is a good faith purchaser:

> A good faith buyer "is one who buys 'in good faith' and 'for value.'" [citations omitted.] [L]ack of good faith is [typically] shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" [citations omitted.]

Filtercorp, 163 F.3d at 577.

The Ninth Circuit made clear in *Filtercorp* that this standard for determining good faith is applicable even when the buyer is an insider. However, neither SGM nor any of SGM's representatives or affiliates are an "insider" of the Debtors. The Debtors and Cain are not aware of any fraud, collusion or attempt to take unfair advantage of other potential bidders. Additionally, the APA was intensively negotiated at arm's length with all parties involved acting in good faith. Based on the foregoing, the Debtors submit that the Court should find that SGM constitutes a good faith purchaser entitled to all of the protections afforded by § 363(m).

B. Section 363(f) Permits the Debtors' Sale of the Purchased Assets to SGM to Be Free and Clear of Any and All Interests and Liens.

The Debtors have requested that, under § 363(f), the proposed sale be effected "free and clear" of encumbrances, interests or liens in the Assets. 11 U.S.C. § 363(f); *see also In re Grumman Indus., Inc*., 467 B.R. 694, 702 (S.D.N.Y. 2012) (discussing generally "free and clear" provision in § 363(f)). Section 363(f) "empowers the trustee to sell the debtor's assets 'free and clear of any interest in such property of an entity other than the estate.'" While "[t]he Bankruptcy Code does not define the phrase "interest in ... property" for purposes of § 363(f) … [the] trend in caselaw '[favors] a broader definition [of the phrase] that encompasses other obligations that may flow from ownership of the property.'" *In re Gardens*, 567 B.R. at 825–26 (citing 3 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 363.06[1] (16th ed. 2017)). Therefore, courts interpret the term "any interest" expansively to effectuate liquidations and reorgazinations "to include not only in rem interests in property, but also other obligations that are "connected to or arise from the

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

property being sold" or that could "potentially travel with the property being sold." *See, e.g., In re La Paloma Generating, Co.*, 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017) (quoting *In re Trans World Airlines, Inc.*, 322 F.3d 283, 285, 288 (3d Cir. 2001)); *see also Mass. Dep't of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. BAP 2013) (interests in property include monetary obligations arising from the ownership of property, even when those obligations are imposed by statute).

The alternative five conditions spelled out in § 363(f) under which a sale free and clear may be authorized are the following:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity [the holder of the interest] consents;
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)-(5) (2012); *see In re Shary*, 152 B.R. 724, 725 (Bankr. N.D. Ohio 1993) (stating the five conditions in § 363(f) are disjunctive and sale is proper where trustee can prove existence of any of the five conditions). The Debtors submit that one or more of the tests of § 363(f) are satisfied here.

1. The Debtors' Proposed Sale is Permissible Pursuant to § 363(f)(1).

Any conditions previously imposed by the Attorney General in the 2015 transaction are an "interest in property" which is subject to § 363(f)(1). *See Memorandum of Decision Overruling Objections of the California Attorney General to the Debtors' Sale Motion* [Docket No. 1146] ("The [AG] Conditions are an 'interest in property' within the meaning of §363(f)."); *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. at 826 ("The Attorney General's claim to regulatory authority … constitutes an 'interest in ... property' for purposes of § 363(f)."). A decision on point is *In re La Paloma Generating, Co*., 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017). In this case, the California Attorney General argued that the debtors could not transfer substantially all of their assets—including their electricity generating facility—to a purchaser free and clear of any obligation to surrender compliance instruments under the California

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

cap and trade program for emissions generated by such facility during the pre-transfer period. The Delaware Bankruptcy Court stated:

> Whether property "may" be sold free and clear of an interest pursuant to section 363(f)(1) of the Bankruptcy Code turns on whether "applicable nonbankruptcy law permits sale of such property free and clear of such interest." Applicable nonbankruptcy law here is California law, and, in particular, the Regulation. Under California law, the general rule of successor liability is that the corporate purchaser of another corporation assets presumptively does not assume the seller's liabilities unless: (1) there is an express or implied assumption of liability; (2) the transaction amounts to a consolidation or merger of the two corporations; (3) the purchasing corporation is a mere continuation of the sellers; or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts. […] The Regulation does not provide for successor liability nor does it in anyway make a Purchaser of a Facility liable for the emissions of the former-Covered Entity. Nor does it explicitly express the need for a purchasing entity to provide for the former-Covered Entity's emissions. […] Under section 363(f), "[t]he trustee may sell property ... free and clear of any interest in such property of an entity other than the estate, only if— ... (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest ...." As noted above, the Court finds that the Regulation does not provide for successor liability related to the Debtor Emission Surrender Obligations. Nor is environmental liability excepted by Section 363(f). […] In the case *sub judice*, Debtor Emission Surrender Obligations are an interest under section 363(f) and the Regulation does not impose successor liability nor does section 363(f).

In re La Paloma Generating, Co., 2017 WL 5197116, *4-8.

Here, the applicable statutes and regulations do not expressly impose successor liability and the obligations sought to be imposed by California Attorney General are an "interest in property" under § 363(f). The Debtors recognize that they must sell the assets "in accordance with applicable non-bankruptcy law," and will submit the necessary application. But conditions imposed on these assets in 2015 by the California Attorney General are an interest in the property, which does not transfer with property because of the sale being free and clear of interests. However, the Debtors will submit the applications required for the transfer of nonprofit healthcare assets to the California Attorney General in accordance with applicable law. The Debtors reserve the right to challenge any conditions imposed by the California Attorney General after that review, but unless and until

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

the Attorney General seeks to impose conditions, it is impossible to know whether those conditions violate the Bankruptcy Code.

2. The Debtors' Proposed Sale is Permissible Pursuant to § 363(f)(2).

Section 363(f)(2 authorizes a sale to be free and clear of an interest if the interest holder consents to the sale. Here, all secured claimants that hold liens secured by the Assets have consented to the proposed sale to SGM. Thus, the sale is authorized pursuant to § 363(f)(2).

3. The Debtors' Proposed Sale is Permissible Pursuant to § 363(f)(3).

Section 363(f)(3) permits a sale free and clear of an interest in property specifically where the interest is a lien, and where the sale price exceeds the aggregate value of all liens. Here, the Assets are encumbered by approximately $521 million of prepetition secured debt, while the Purchase Price, to be paid at closing, is $610 million. Thus, the purchase price exceeds the aggregate amount of all claims held by creditors who hold a lien or security interest in the property being sold, and the sale is also authorized pursuant to § 363(f)(3).

4. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. § 363(f)(5).

Section 363(f)(5) permits a sale of property free and clear of liens and interests if "such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f)(5); *P.K.R. Convalescent Ctrs., Inc. v. Commonwealth of Va., Dep't of Med. Assistance Serv. (In re P.K.R. Convalescent Ctrs., Inc.)*, 189 B.R. 90 (Bankr. E.D. Va. 1995) (allowing sale of nursing home assets under § 363(f)(5) over objection of the Department of Medical Assistance Service where its interest was reducible to a claim and subject to a hypothetical money satisfaction).

Section 363(f)(5) has generally been interpreted to mean that if, under applicable law, the holder of the lien or interest could be compelled to accept payment in exchange for its interest, the trustee (or debtor in possession) may take advantage of that right by replacing the holder's lien or interest with a payment or other adequate protection. Collier on Bankruptcy, ¶ 363.06 [6] (15th ed. rev. 2003) ("Collier"). Applicable nonbankruptcy law may recognize a monetary satisfaction when the lienholder is to be paid in full out of the proceeds of the sale or otherwise. *Id.* Thus, for example, a sale free of a first mortgage might be approved when the proceeds are sufficient to pay

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

in full the first mortgage and the second mortgagee has consented to the sale. However, § 363(f)(5) does not require full payment to the lien or interest holder if the trustee can demonstrate the existence of another legal or equitable proceeding by which the holder may be compelled to accept less than full satisfaction of the secured debt. *In re Grand Slam U.S.A., Inc*., 178 B.R. 460, 461-62 (E.D. Mich. 1995) (holding that the "money satisfaction" language in § 363(f)(5) does not require full payment to the lien holder); *In re Healthco Int'l Inc*., 174 B.R. 174, 176-78 (Bankr. D. Mass. 1994) (construing "money satisfaction of such interest" to mean a payment constituting less than full payment of the underlying debt because any lien can always be discharged by full payment of the underlying debt pursuant to §363(f)(3)); *Scherer v. Fed. Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.)*, 159 B.R. 821, 829 (Bankr. N.D. Ill. 1993).

Courts have held that a chapter 11 cramdown is a typical "legal proceeding" by which an entity may be compelled to accept less than full money satisfaction and which will permit the sale of creditor's collateral free and clear of interest under § 363(f)(5). *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 508 (Bankr. N.D. Ala. 2002) (holding that the liens or interests identified in the sale motion could be compelled to accept a money satisfaction in a cramdown plan of reorganization in a chapter 11 case); *In re Terrace Chalet Apartments, LTD.*, 159 B.R. at 829 (finding that § 1129(b)(2) cramdown is such a provision); *In re Perroncello*, 170 B.R. 189 (Bankr. D. Mass. 1994); Collier, ¶ 363.06[6][a]; *but see In re PW, LLC*, 391 B.R. 25, 46 (B.A.P. 9th Cir. 2008). Thus, the trustee can sell property free and clear of a creditor's lien it if demonstrates it can cramdown the creditor's interest pursuant to § 1129(b)(2).

In addition to the legal arguments set forth above, the ability of a debtor to "cramdown" a secured creditor under § 1129(b)(1) and (2) also constitutes a "legal proceeding," pursuant to which a secured creditor could be compelled to accept a money satisfaction. *See In re Grand Slam, U.S.A. Inc.,* 178 B.R. 460, 462 (E.D. Mich. 1995). Section 1129(b)(2)(A) allows cramdown of a secured creditor, provided that it receives "the indubitable equivalent" of its claim. A debtor can cramdown a secured creditor if it demonstrates (1) the debtor is not unfairly discriminating against the secured creditor, § 1129(b)(1); (2) it is acting in good faith, § 1129(a)(3)-(b)(1); and (3) the secured creditor is receiving the actual value of its claim, § 1129(b)(2)(A)(i)(II), § 1129(b)(2)(A)(iii). *See also In*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

re Sandy Ridge Dev. Corp., 881 F.2d 1346, 1350 (5th Cir. 1989) (holding that "indubitable equivalent" of a secured creditor's interest is the actual value of the claim). In *In re Hunt Energy Co., Inc*., 48 B.R. 472, 485 (Bankr. N.D. Ohio 1985), the court found that a lien which attaches to the proceeds of a sale would necessarily be reduced by subsequent valuation at a hearing under § 506(a) to meet the "indubitable equivalence" requirements of section 1129(b)(2)(A). Once § 1129(b)(2)(A) is satisfied, the lienholder would be compelled through the cramdown process to accept such money satisfaction as dictated by the cramdown provisions. *Id*.

All of the above requirements for cramdown are met in this proposed transaction. The sale of the Assets to SGM was negotiated and is being conducted in good faith. The secured creditors with valid liens against the Assets are being treated fairly and in accordance with their respective lien priorities, so there is no unfair discrimination present in the proposed sale. Finally, any such secured creditors will receive the actual value of their secured claim as measured by § 506(a).

Based upon all of the foregoing, all creditors of the Debtors, including all secured creditors of the Debtors, could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their interest. The Debtors' proposed sale of the Assets to SGM should therefore be free and clear of all interests and liens pursuant to § 363(f)(5).

C. <u>The Court Should Authorize the Debtors to Assume and Assign to SGM All of the Assumed Contracts that SGM Designates.</u>

Barring exceptions not herein relevant, §§ 365(a) and 1107(a) authorize a debtor in possession, "subject to the Court's approval, ... [to] assume or reject any executory contract or unexpired lease of the debtor." A debtor in possession may assume or reject executory contracts for the benefit of the estate. *In re Klein Sleep Prods, Inc*., 78 F.3d 18, 25 (2d. Cir. 1996); *In re Central Fla. Metal Fabrication, Inc*., 190 B.R. 119, 124 (Bankr. N.D. Fla. 1995); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996). In reviewing a debtor in possession's decision to assume or reject an executory contract, a bankruptcy court should apply the "business judgment test" to determine whether it would be beneficial to the estate to assume it. *In re Continental Country Club, Inc*., 114 B.R. 763, 767 (Bankr. M.D. Fla. 1990); *see also In re Gucci*, 193 B.R. at 415. The business judgment standard requires that the court follow the business judgment of the debtor unless that judgment is the product of bad faith, whim, or caprice. *In re Prime Motors Inns*, 124 B.R. 378, 381

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

(Bankr. S.D. Fla. 1991) (*citing Lubrizol Enterprises v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986)).

Pursuant to § 365(f)(2), a debtor may assign its executory contracts and unexpired leases, provided the debtor first assumes such executory contracts and unexpired leases in accordance with §365(b)(1), and provides adequate assurance of future performance by the assignee. Pursuant to § 365(b)(1), assumption of executory contracts and unexpired leases requires a debtor to: (a) cure any existing defaults under such agreements; (b) compensate all non-debtor parties to such agreements for any actual pecuniary loss resulting from the defaults; and (c) provide adequate assurance of future performance under the contract or lease. 11 U.S.C. § 365(b)(1); *see also In re Bowman*, 194 B.R. 227, 230 (Bankr. D. Ariz. 1995*); In re AEG Acquisition Corp*., 127 B.R. 34, 44 (Bankr. C.D. Cal. 1991), *aff'd* 161 B.R. 50 (B.A.P. 9th Cir. 1993). Pursuant to § 365(f)(1), a debtor may assign an executory contract or unexpired lease pursuant to § 365(f)(2) notwithstanding any provision in such executory contract or unexpired lease that prohibits, restricts or conditions the assignment of such executory contract or unexpired lease.

The assumption and assignment of executory contracts furthers the goals of chapter 11 of promoting reorganization by balancing the debtor's interest in maximizing the value of its estate against the contracting party's interest in receiving the benefit of its bargain and being protected against default by the debtor after assumption has occurred. *In re Embers 86th Street. Inc*., 184 B.R. 892, 896 (Bankr. S.D.N.Y. 1995).

Here, the Debtors are seeking to assume and assign to SGM all of the Debtors' executory contracts and unexpired leases that SGM designates as executory contracts and unexpired leases subject to assumption and assignment. As set forth above, the Debtors have filed several notices and supplements listing all of the known executory contracts and unexpired leases and related cure amounts and are working with counterparties to resolve any issues regarding outstanding cure amounts. As a result of the foregoing, and in connection with the sale, the Debtors are seeking the Court's authority to assume and assign to SGM the Assumed Contracts and to fix the required Cure Amounts that would need to be paid to the other parties to the executory contracts and unexpired leases to enable compliance with the provisions of § 365(b)(1)(A) at the Cure Amounts set forth in

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

the Cure Notice unless the other parties to the executory contracts and unexpired leases file a timely objection to the Cure Notice and the Court determines that the required Cure Amount is different than the amount set forth in the Cure Notice.

D. Potential Disputes Regarding Assignment of Certain Agreements to SGM.

The Bidding Procedures Order set a deadline of April 15, 2019, at 4:00 p.m., for the Debtors to reply to any objection or response. The Debtors will either (i) respond or object as appropriate to pending objections or responses or (ii) submit a stipulation or notice, as applicable, for resolution of any objection or response.[6]

E. The Court Should Waive the Fourteen-Day Waiting Periods Set Forth in Bankruptcy Rules 6004(h) and 6006(d).

Bankruptcy Rule 6004(h) provides, among other things, that an order authorizing the use, sale or lease of property […] is stayed until the expiration of fourteen days after entry of the Court order, unless the Court orders otherwise. Bankruptcy Rule 6006(d) has a similar provision with respect to an order approving of a debtor's assumption and assignment of unexpired leases and executory contracts.

For all of the reasons set forth above, the Debtors believe that selling the Assets to SGM in accordance with the timeline provided in the APA and the Bidding Procedures Order is in the best interests of the Debtors' estates, their creditors and shareholders. In order to facilitate the most expeditious Closing possible, the Debtors request that the Sale Order be effective immediately upon entry by providing that the fourteen-day waiting periods of Bankruptcy Rule 6004(h) and 6006(d) are waived.

III. CONCLUSION

For all these reasons, the Court should enter the Sale Order and grant all of the other relief requested in this Memorandum.

[6] Under the APA, SGM and the Debtors agreed to meet and confer with the various unions whose Collective Bargaining Agreements ("CBAs") are implicated by the proposed sale to attempt "to renegotiate each [CBA] currently in effect with each applicable union." Stalking Horse APA at § 5.11. SGM and the Debtors will proceed with this process, and SGM has not yet made a decision yet regarding the treatment of the CBAs.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Dated: April 10, 2019

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit I

Exhibit I

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and Debtors In Possession

FILED & ENTERED

MAY 02 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

CHANGES MADE BY COURT

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 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
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. Judge Ernest M. Robles

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

Hearing:
Date: April 17, 2019
Time: 10:00 a.m.
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

This matter came before the Court on the *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (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* (the "Motion") [Docket No. 1279], filed by Verity Health System of California, Inc. ("VHS"), and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (the "Debtors"), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.[1]

At the previous hearing on the Motion on February 19, 2019 (the "Bidding Procedures Hearing"), the Court considered various objections (the "Premature Objections") filed by: (i) St Vincent IPA Medical Corporation and Angeles IPA [Docket No. 1397]; (ii) the California Attorney General [Docket No. 1352]; (iii) MGH Painting Inc. [Docket No. 1358]; and (iv) Belfor USA Group, Inc. [Docket No. 1364]. The Court ruled that the Premature Objections were premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the "Bidding Procedures Order") [Docket No. 1572]. The Bidding Procedures Order also stated that objections filed by the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services [Doc. No. 1346] and the California Department of Health Care Services [Doc. No. 1353] (the "Continued Objections") were continued, as resolved by stipulations [Docket Nos. 1458 and 1473, respectively], approved by this Court's orders [Docket Nos. 1465 and 1483, respectively].

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "LBR" references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Any additional objections that were filed and overruled at the Bidding Procedures Hearing are not listed herein.

The Court, having reviewed the Memorandum [Docket No. 2115], the Declarations of Richard Adcock [Docket Nos. 8 and 1469] and James Moloney [Docket No. 2220] in support thereof, the *Notice To Counterparties To Executory Contracts And Unexpired Leases Of The Debtors That May Be Assumed And Assigned* [Docket No. 1704], the *Supplemental Notice To Counterparties To Executory Contracts and Unexpired Leases of The Debtors That May Be Assumed and Assigned* [Docket No. 1836], the *Second Supplemental Notice Re Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 2065] (together Docket Nos. 1704, 1836 and 2065 are the "Cure Notice"), the *Notice of Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. For Assumption and Assignment* [Docket No. 2131] (the "Designation Notice"), the *Notice That No Auction Shall Be Held Re Debtors' Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective 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. 2053] (the "No-Auction Notice"), the objections filed by various counterparties to certain executory contracts and unexpired leases [Docket Nos. 1788; 1804; 1819; 1830; 1849; 1850; 1852; 1853; 1856-1858; 1863; 1866; 1869; 1870; 1873-1877 1881; 1882; 1885; 1890-1892; 1904; 1926; 1930; 1933; 1940; 1946; 1948; 1949; 1953; 1954; 1965; 2058; 2066; 2108; 2113; 2144; 2146; 2148, 2150, 2157, 2161, 2162] (the "Cure Objections"), the objection by the California Department of Health Care Services (the "DHCS") [Docket No. 1879], the *Stipulation Continuing Hearing Regarding Creditors U.S. Department of Health and Human Services and California Department of Health Care Services* [Docket No.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

2125], the *Limited Opposition of Belfor USA Group, Inc. to Debtors' Motion for an Order Authorizing the Sale of Property Free and Clear of All Claims Liens and Encumbrances* [Docket No. 2130], the *Objection of United Healthcare Insurance Company to Debtors' Motion for Order Approving Form of Asset Purchase Agreement for Stalking Horse Bidder, Etc*. [Docket No. 2145] filed United Healthcare Insurance Company, *SEIU-UHW's Objection and Reservation of Rights to Debtors' Sale Motion* filed by the Service Employees International Union, United Healthcare Workers-West [Docket No. 2147], the *Limited Objection and Reservation of Rights of United Nurses Associations of California to Motion of Debtors for Approval of Sale [of Remaining Hospital Assets to the Highest Bidder* [Docket No. 2155] filed by the United Nurses Association of California, the *Reservation of Rights of U.S. Bank National Association, As Series 2015 Note Trustee and as Series 2017 Note Trustee and as Series 2017 Note Trustee, with Respect to Debtors' Motion for Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and For Stalking Horse Bidder and for Prospective 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. 2156] filed by U.S. Bank National Association, As Series 2015 Note Trustee and as Series 2017 Note Trustee, the *Official Committee of Unsecured Creditors Response to the Debtors' SGM Sale Motion* [Docket No. 2164], the *Reservation of Rights of California Statewide Communities Development Authority to Motion of Debtors for Approval of Sale [of Remaining Hospital Assets] to the Highest Bidder* [Docket No. 2168] filed by the California Statewide Communities Development Authority, the Premature Objections, the Continued Objections, and any withdrawals thereof, the statements, arguments and representations of the parties made at the Sale Hearing; and the entire record of these cases; and the Court, having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and that

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in the Court's tentative ruling [Docket No. 2221]; and all objections to the Motion, if any, having been withdrawn, continued or overruled; and for the reasons set forth in the Court's tentative ruling [Docket No. 2221], which the Court adopts as its final ruling and which is incorporated herein by reference; and after due deliberation and sufficient good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES THAT:[2]

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)(2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtors have provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase Agreement, dated January 8, 2019, a copy of which is attached as Exhibit "A" to Docket No. 1279 (the "APA"); (ii) the Sale Hearing; (iii) the No-Auction Notice; and (iv) the assumption and assignment of the executory contracts and unexpired leases and proposed cure amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and no further notice

[2] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

of the Motion, the relief requested therein or the Sale Hearing is required. The Debtors have also complied with all obligations to provide notice of the Auction, the Sale Hearing, the proposed sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. Arm's Length Transaction. The APA and other documents and instruments (the "Transaction Documents") related to and connected with this transaction (the "Transaction") and the consummation thereof were negotiated and entered into by the Debtors and Strategic Global Management, Inc. ("SGM"), as Purchaser under the APA without collusion, in good faith and through an arm's length bargaining process. Neither SGM nor any of its affiliates or representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the Debtors, SGM, or their respective representatives engaged in any conduct that would cause or permit the APA, any of the other Transaction Documents or the Transaction to be avoided under § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the APA and the other Transaction Documents, including, without limitation, the consideration provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be avoided, and no damages may be assessed against SGM or any other party, as set forth in § 363(n). The consideration provided by SGM is fair, adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws of the United States or any of its jurisdictions or subdivisions, including the State of California.

E. Good Faith Purchaser. SGM has proceeded in good faith and without collusion in all respects in connection with the sale process, in that: (i) SGM, in proposing and proceeding with the Transaction in accordance with the APA, recognized that the Debtors were free to deal with other interested parties; (ii) SGM agreed to provisions in the APA that would enable the Debtors to accept a higher and better offer; (iii) SGM complied with all of the provisions in the Bidding Procedures Order applicable to SGM; (iv) all payments to be made by SGM and other agreements entered into or to be entered into between SGM and the Debtors in connection with the Transaction have been disclosed; (v) the negotiation and execution of the APA and related

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Transaction Documents were conducted in good faith and constituted an arm's length transaction; (vi) SGM did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors. SGM is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction, any terms or conditions of the Transaction or SGM's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and sale of the Purchased Assets and, except with respect to the liens arising from the Special Assessments and the PACE Obligations (each as defined in §1.1(a)(iii) of the APA) assumed by SGM, shall vest in SGM, through the consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the sale or the Motion are deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did object fall within one or more of the other subsections of § 363(f). All holders of the Encumbrances in the Purchased Assets are adequately protected by having their respective Encumbrances attach to the Debtors' interests in the proceeds of the sale of the Purchased Assets under the APA (subject to any Challenge within the meaning of that certain *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the "Final DIP Order") that has been, or may be, timely filed[3]), and any related documents or instruments delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the extent and manner herein provided.

H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in consummating the Transaction, and it is in the best interests of the Debtors and their estates to consummate the Transaction within the timeline set forth in the Motion and the APA. The Court finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth in this Order.

[3] The Final DIP Order granted to the Committee standing to file the requisite pleading to challenge the validity, enforceability and amount of the Prepetition Liens (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") within ninety (90) days from the formation of the Committee (the "Challenge Deadline"). *See* Final DIP Order ¶ 5(e). The Committee's investigation as to the Prepetition Liens remains ongoing. The Committee and the Prepetition Secured Creditors have entered into a number of stipulations (the "Challenge Stipulations") by which the Committee has acknowledged and stipulated to the validity, enforceability and perfection of the Prepetition Liens in certain collateral identified in the Challenge Stipulations, and by which the Challenge Deadline has been extended a number of times with respect to the validity, enforceability and perfection of the Prepetition Liens in any other collateral. The Challenge Deadline with respect to any Prepetition Liens for which the Committee has not stipulated pursuant to the Challenge Stipulations as to the validity, enforceability and perfection thereof is now May 13, 2019.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign to SGM the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below) and to the extent subsequently identified by SGM pursuant to paragraph 16 below, the Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently Identified Designated Contracts and the Subsequently Identified Contracts are collectively referred to herein as the "Designated Contracts") in connection with the consummation of the Transaction, and the assumption and assignment of the Designated Contracts is in the best interests of the Debtors and their estates.

J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the APA, unless otherwise ordered, any and all defaults existing on or prior to the Closing under any of the Designated Contracts will have been cured, within the meaning of § 365(b)(1)(A), by payment of the amounts and in the manner set forth below, unless otherwise agreed by SGM and the counterparty. SGM has provided or will provide adequate assurance of future performance of and under the Designated Contracts within the meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and shall have no further obligation to provide assurance of performance to any counterparty to a Designated Contract. Pursuant to § 365(f), the Designated Contracts to be assumed by the Debtors (i.e., St. Francis Medical Center, a California nonprofit public benefit corporation ("St. Francis Medical Center"), St. Vincent Medical Center, a California nonprofit public benefit corporation ("St. Vincent Medical Center"), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation ("St. Vincent Dialysis Center"), and Seton Medical Center, a California nonprofit public benefit corporation ("Seton Medical Center") (collectively, the "Hospitals"), VHS, and Verity Holdings LLC, a California limited liability company ("Holdings")), and assigned to SGM under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, SGM, notwithstanding any provision in such Designated Contracts prohibiting their assignment or transfer. The Debtors have demonstrated that no other parties to any of the Designated Contracts has incurred any actual pecuniary loss

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

resulting from a default on or prior to the Closing under any of the Designated Contracts within the meaning of § 365(b)(1)(B).

K. Rejection of Executory Contracts and Unexpired Leases. The Debtors will have demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for the Hospitals to reject all of their executory contracts and unexpired leases, excluding (i) Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in addition to the Hospitals, (iii) any prepetition contract that is the subject of a Rule 9019 settlement motion prior to Closing, and (vi) any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which a Hospital is a party or sponsor, which matters shall be scheduled for determination as provided in paragraph 33 below. Each such executory contract rejection is subject only to the conditions set forth in paragraphs 18, 31, and 32. The Debtors shall file an appropriate motion to reject such contracts, covered by this paragraph K, prior to Closing and shall request therein that the rejection be effective as of the Closing or as otherwise appropriate.

L. Highest or Otherwise Best Offer. The Debtors solicited offers and noticed the Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. Other than SGM's Stalking Horse Bid, the Debtors received two Qualified Partial Bids by the Partial Bid Deadline and did not receive a Qualified Full Bid (as such terms are defined by the Bidding Procedures Order). The Debtors properly consulted with the Consultation Parties in selecting the SGM Stalking Horse Bid as the highest and best bid and in determining that no auction should be held (as such terms are defined in the Bidding Procedures Order), as set forth in their No-Auction Notice. The transfer and sale of the Purchased Assets to SGM on the terms set forth in the APA constitutes the highest or otherwise best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination, in

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

consultation with the Consultation Parties (as defined in the Bidding Procedure Order), that the APA constitutes the highest or best offer for the Purchased Assets and to not conduct an auction constitutes a valid and sound exercise of the Debtors' business judgment.

M. No *De Facto* or *Sub Rosa* Plan of Reorganization. The sale of the Purchased Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity or membership interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or (iv) classify claims or equity or membership interests.

N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED and APPROVED in all respects to the extent provided herein.

2. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including any reservation of rights included in such objections, are overruled on the merits with prejudice. To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the terms of this Sale Order shall prevail.

3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the transfer and sale of the Purchased Assets to SGM on the terms set forth in the APA, is approved in all respects, and the Debtors are authorized and directed to consummate the Transaction in accordance with the APA, including, without limitation, by executing all of the Transaction Documents (and any ancillary documents or instruments that may be reasonably necessary or desirable to implement the APA or the Transaction) and taking all actions necessary and appropriate to effectuate and consummate the Transaction (including the transfer and sale of the Purchased Assets) in consideration of the Purchase Price (as defined in § 1.1 of the APA) upon

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

the terms set forth in the APA, including, without limitation, assuming and assigning to SGM the Designated Contracts. The Debtors and SGM shall have the right to make any mutually agreeable, non-material changes to the APA, which shall be in writing signed by both parties, without further order of the Court provided, that after reasonable notice, the Official Committee of Unsecured Creditors (the "Committee"), the DIP Agent (as defined in the Final DIP Order defined below), and the Prepetition Secured Creditors (as defined in the Final DIP Order) do not object to such changes. Any timely objection by the aforementioned parties to any agreed non-material changes to the APA may be resolved by the Court on shortened notice.

4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal, valid, enforceable and effective transfer and sale of the Purchased Assets to SGM free and clear of all Encumbrances, except with respect to the liens arising from the Special Assessments and the PACE Obligations assumed by SGM, as further set forth in the APA and this Sale Order; and (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the Purchased Assets, all counterparties to the Designated Contracts and all other persons and entities.

5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent, effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force, extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Secured Creditors, as applicable, pursuant to the Final DIP Order, to the extent that (i) the rights granted to the Prepetition Secured Creditors with respect to §§506(c) and 552(b) by the Final DIP Order are not limited or modified as a result of the appeal from the Final DIP Order filed by the Committee on November 29, 2019; and/or (ii) any replacement liens or security interest granted to the Prepetition Secured Creditors by the Final DIP Order are not invalidated as a result of any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to the extent of and in accordance with its terms with all parties reserving all rights thereunder.

6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order shall, as of the Closing, be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of the Debtors' rights, title and interest in and to the Purchased Assets to SGM. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department, except as stated herein, is hereby authorized and directed to accept all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

7. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of such Purchased Assets either to (a) the Debtors before the Closing or (b) to SGM or its designee upon the Closing, and to cooperate with the Debtors and SGM in the Debtors' and SGM's fulfillment of their obligations hereunder and pursuant to the APA.

8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and upon consummation of the Transaction, including, without limitation, payment of the Purchase

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Price to the Debtors, vest SGM with all right, title, and interest in the Purchased Assets, free and clear of all Encumbrances. Upon closing of the Transaction, SGM shall take title to and possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the APA. The transfer of the Purchased Assets from the Debtors to SGM constitutes a transfer for reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of California.

9. Following the Closing, no holder of any Encumbrance against the Debtors or upon the Purchased Assets shall interfere with SGM's respective rights in, title to or use and enjoyment of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to SGM, including the assumption and assignment of the Designated Contracts.

10. SGM shall not be deemed, as a result of any action taken in connection with, or as a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their estates by reason of any theory of law or equity, including, without limitation, any bulk sales law, doctrine or theory of successor liability, or any theory or basis of liability, regardless of source of origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed Liabilities, SGM is not assuming any of the Debtors' debts.

11. This Sale Order (i) shall be effective as a determination that, on Closing, all Encumbrances existing against the Purchased Assets before the Closing have been unconditionally released, discharged and terminated, and that the transfers and conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all persons and entities. If, following a reasonable written request made by the Debtors, any person or entity that has filed financing statements or other documents or agreements evidencing any Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

in connection with Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to the Purchased Assets, then SGM and/or the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets. For the avoidance of doubt, such statements, instruments, releases and other documents shall not impair Encumbrances that attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to paragraphs 5 and 13 hereof.

12. In accordance with the APA, concurrently with the Closing, SGM shall pay that portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in the APA. Any direct expenses of the Sale shall be disclosed by Debtors to the DIP Agent, the Prepetition Secured Creditors, and the Committee in advance of the Closing.

13. The terms and conditions of the Final DIP Order shall apply with respect to the Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

(a) the Debtors shall direct SGM, pursuant to the terms of the APA, to remit all Sale Proceeds to the separate accounts opened in the name of each Debtor for the Sale Proceeds (each such hereafter referred to as "Escrow Deposit Account");

(b) in giving direction to SGM pursuant to sub-paragraph (a), above, the Debtors shall exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of rights in paragraph 4 of the Final DIP Order and paragraph 31 of the Bidding Procedures Order; provided further that nothing in this paragraph shall waive or limit any rights the Committee or the Prepetition Secured Creditors may have in connection with the confirmation of a proposed

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate values and the Sale Proceeds);

(c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or the Final DIP Order without further order of this Court, after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee; and

(d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon; and

(e) for the avoidance of doubt, the rights of the Debtors, the Committee, and the Prepetition Secured Creditors as to the Sale Proceeds and any funds held in a Deposit Escrow shall be, except as set forth herein, as contemplated by Paragraph 4 of the Final DIP Order, and nothing in this Order shall be construed as altering, amending, waiving, or affecting in any way such rights. Concurrently with the Closing or as soon thereafter as is possible, and in accordance with the APA, SGM shall pay to the counter-parties to the Designated Contracts the cure amounts

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

set forth in the Cure Notice, or as otherwise agreed to by the Debtors, SGM and the applicable counter-parties thereto or ordered by this Court after a continued hearing on the Cure Objections (the "Designated Cure Amounts"). SGM has the right under the APA to remove any Contracts from the list of Designated Contracts up to seven (7) days prior to Closing, as also set forth in the *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections* [Docket No. 1865].

14. To the extent that any of the contracts and/or leases, which give rise to the Designated Cure Amounts and are set forth in the Designation Notice and are not subsequently and timely removed by SGM under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections* [Docket No. 1865] (the "Currently Identified Designated Contracts") are executory contracts or unexpired leases (over which the Court is not making any such determination at this time), then in connection with the Closing, the Debtors shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they are deemed part of the Designated Contracts) and to have assigned them to SGM, and SGM shall have assumed all obligations owing under all such Currently Identified Designated Contracts arising after and following the Closing. The Court shall resolve any and all disputes which may arise between the Debtors, SGM and any of the Currently Identified Designated Contract Counter-Parties over whether the Currently Identified Designated Contracts are executory contracts or unexpired leases and whether any of the Currently Identified Designated Contract Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the Designated Cure Amounts (the "Assumption Dispute").

15. In the event that the Court determines that any such counter-parties to the Currently Identified Designated Contracts (the "Currently Identified Designated Contract

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Counter-Parties" and, individually, a "Currently Identified Designated Contract Counter-Party") have an allowed cure claim against the Debtors which exceeds the Designated Cure Amounts (the "Excess Cure Amount"), the difference will be paid by SGM and shall not be the responsibility of the Debtors as more specifically set forth below; provided, however, that unless the Court makes such a determination on or before fifteen (15) days prior to Closing, and unless the Debtor, SGM and the Currently Identified Designated Contract Counter-Party agree otherwise, the Currently Identified Designated Contract which is the subject of such Assumption Dispute, shall be deemed a rejected contract within the meaning of § 1.11(a) of the APA as of ten (10) days prior to Closing, and SGM, except as provided below, shall have no obligation to assume such Currently Identified Designated Contract or to pay any Cure Amount or Excess Cure Amount in connection with such Currently Identified Designated Contract. To the extent an Assumption Dispute relates solely to the Cure Amount, the Debtors may, with SGM's consent, assume and assign the applicable executory contract or unexpired lease at Closing and prior to the resolution of the Assumption Dispute by the Bankruptcy Court, provided, that either (a) the Bankruptcy Court has estimated the maximum cure payment, pursuant to 11 U.S.C. § 502(c), and SGM has remitted such amount to the Debtors to be held as sales proceeds in the Sale Proceeds Account for the relevant Debtor(s), or (b) SGM provides to the relevant Debtor(s) and non-Debtor counterparty a separate reasonably acceptable undertaking that SGM will promptly pay the maximum disputed cure amount in accordance with 11 U.S.C. § 365 (b)(1)(A) and (B) (or such smaller amount as may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor party and SGM). The Debtors shall pay and hereby are authorized to pay disputed cure amounts from the relevant Sales Proceeds Account(s) upon entry of a final order by this Court to the extent SGM remitted to Sellers the amount required by item (a) of this paragraph of the Order.

16. All of the Currently Identified Designated Contracts, to the extent they are executory contracts or unexpired leases and are not subsequently and timely removed by SGM under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections [Docket No. 1865], or deemed a rejected contract within the meaning of § 1.11(a) of the APA pursuant to paragraph 15 above, shall be part of the Designated Contracts that will be assumed by the Debtors and assigned to SGM at the Closing. In the event that SGM elects to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated Contracts (the "Subsequently Identified Designated Contracts" and, individually, a "Subsequently Identified Designated Contract") under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections* [Docket No. 1865], SGM shall notify the Debtors of any such Subsequently Identified Designated Contracts on or before thirty days before Closing, and the Debtors shall (i) file a notice with the Court identifying all such Subsequently Identified Designated Contracts and their respective cure amounts as agreed upon between the Debtors and SGM, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and assigned to SGM at the Closing, with SGM to be obligated to pay all cure amounts owing to such Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SGM and the applicable counter-parties thereto, or ordered by the Court in accordance with paragraphs 34 and 36 below (the "Additional Cure Amounts"), so long as such amount as ordered by the Court is no greater than the amount agreed upon by SGM; and in the event the Additional Cure Amount is greater than the amount agreed upon by SGM, and SGM is not willing to pay the Additional Cure Amount, the Debtors shall not be required to pay the Additional Cure Amount(s) and the Subsequently Identified Designated Contract(s) shall be deemed a rejected contract within the meaning of § 1.11(a) of the APA pursuant to paragraph 15 above; provided, and for the avoidance of doubt, no collective bargaining agreement, pension plan or health and welfare plan providing

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

collectively bargained benefits to which a Hospital is a party or sponsor constitutes a Currently Identified Designated Contract or a Subsequently Identified Designated Contract for which SGM or the Debtors may be obligated to pay any cure amount.

17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or transfer each of the Designated Contracts to SGM, including the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts (collectively, the "Contract Counter-Parties"). At the Closing, SGM shall pay the (i) Sale Proceeds, (ii) the Designated Cure Amounts identified in paragraph 13 above, (iii) the Excess Cure Amounts identified in paragraph 15 above, and (iv) the Additional Cure Amounts, subject to paragraph 15 above. Payment by SGM of such Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient amounts to "cure" all "defaults" with respect to all such Currently Identified Designated Contracts and Subsequently Identified Designated Contracts under § 365(b). The foregoing payment shall (i) effect a cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii) compensate all such Contract Counter-Parties for any actual pecuniary loss resulting from any such default. The Debtors shall then have assumed and assigned to SGM, effective as of the Closing, all of the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the Debtors of all such Designated Contracts to SGM shall not be a default thereunder. After the payment of the Designated Cure Amounts and the Additional Cure Amounts, neither the Debtors nor SGM shall have any further liabilities to any Contract Counter-Parties, other than SGM's obligations under the Designated Contracts that accrue and become due and payable after the Closing Date. In addition, adequate assurance of future performance has been demonstrated by or on behalf of SGM with respect to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, SGM shall not be liable for the payment of any liabilities or obligations arising from or related to (a) any executory contracts that the Debtors intend to reject by appropriate motion and which are not being assumed and assigned to SGM, (b) any multiparty contract affecting more than one Debtor in addition to one of the hospitals subject to the

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Transaction, or (c) any collective bargaining agreement ("CBA"), pension plan, or health and welfare plan providing for collectively bargained for benefits to which a Hospital is a party or a sponsor, unless expressly assumed and assigned with SGM's consent.

18. The Debtors intend, and are hereby authorized, to (A) reject, pursuant to § 365(a), all executory contracts to which one or more of the Hospitals are a party, excluding (i) Designated Contracts, and (ii) any prepetition multiparty contract affecting more than one Debtor in addition to one of the Hospitals, and, (B) reject and terminate, to the extent separately authorized by this Court, pursuant to §§ 1113, 1114, and any other applicable provision of the Bankruptcy Code, any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which one of the Hospitals is a party or sponsor and that SGM does not assume.

19. All of the Contract Counter-Parties are forever barred, estopped, and permanently enjoined from (i) raising or asserting against the Debtors or SGM, or any of their property, any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of the consummation of the Transaction contemplated by the APA, including, without limitation, the Transaction and the assumption and assignment of the Designated Contracts, including any asserted breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or any purported written or oral modification to the Designated Contracts and (ii) asserting against SGM any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed Obligations.

20. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contract or allow the counterparty to such Designated Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

that are void and of no force and effect with respect to the Debtors' assumption and assignment of such Designated Contract to SGM in accordance with the APA, pursuant to § 363(f).

21. The terms and provisions of this Sale Order, as well as the rights granted under the Transaction Documents, shall continue in full force and effect and are binding upon any successor, reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding entry of any order of conversion or dismissal ~~any such conversion, dismissal or order entry~~. Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict with or derogate from the provisions of the APA, any documents or instruments executed in connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern. The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or dismissal of the cases and the entry of any other order that may be entered in the cases, including any order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

22. The Transaction contemplated by the APA and other Transaction Documents are undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy Code. SGM is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the sale of the Purchased Assets to SGM. The APA and the Transactions contemplated thereby cannot be avoided under § 363(n).

23. The failure to specifically include any particular provision of the APA or the other Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence in approving the Transaction (including the transfer and the sale of the Purchased Assets).

25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to (i) allow SGM to deliver any notice provided for in the APA and Transaction Documents and (ii) allow SGM to take any and all actions permitted under the APA and Transaction Documents in accordance with the terms and conditions thereof.

26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order shall govern.

27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to (i) hear and determine all disputes between the Debtors and/or SGM, as the case may be, and any other non-Debtor party to, among other things, the Designated Contracts concerning, among other things, assignment thereof by the Debtors to SGM and any dispute between SGM and the Debtors as to their respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel delivery of the Purchased Assets to SGM free and clear of Encumbrances, except with respect to the liens arising from the Special Assessments and the PACE Obligations; (iii) compel the delivery of the Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement, and enforce the provisions of this Sale Order; and (v) protect SGM against (A) claims made related to any of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious liability (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or (C) any Encumbrances asserted on or against SGM or the Purchased Assets.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

28. Following the date of entry of this Sale Order, the Debtors and SGM are authorized to make changes to the APA and/or execute supplemental agreements implementing the transactions contemplated by the APA without the need for any further order of the Court provided that all such changes have been approved in writing by the Debtors, SGM, the Committee, the DIP Agent, and Prepetition Secured Creditors. Any other proposed changes to the APA or this Sale Order shall require a further order of the Court, after reasonable notice under the circumstances and a hearing.

29. Notwithstanding any other provision of this Sale Order or any other Order of this Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

30. To the extent the Purchased Assets contain records of the Verity Health System Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension Plans") or employment records of participants of the Pension Plans, SGM shall store, and preserve any such records until the Pension Benefit Guaranty Corporation ("PBGC") has completed its investigation regarding the Pension Plans and shall make such documents available to PBGC for inspection and copying. Such records include, but are not limited to, any Pension Plan governing documents, actuarial documents, and employment records (collectively, the "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan Documents that are not Purchased Assets no earlier than February 28, 2020, and shall make such documents available to the PBGC for inspection and copying.

31. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Hospitals' Medi-Cal Provider Agreements or (ii) DHCS will file a supplemental objection to the proposed transfer of the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medi-Cal 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 objections.

32. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Hospitals' Medicare Provider Agreements or (b) HHS will file a supplemental objection to the proposed transfer of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medicare Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medicare Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the HHS or a Court order resolving the HHS's objections.

33. In accordance with the terms of §§ 4.7 and 5.11 of the APA, the Debtors and SGM will negotiate regarding modification of applicable CBAs. To the extent the Debtors seek modification, rejection and/or termination of CBAs, they will comply with the requirements of § 1113, as applicable, and may do so before or after Closing under their discretion.

34. A continued hearing on the Cure Objections shall be held on June 5, 2019, at 10:00 a.m. (Pacific Time). As to the Currently Identified Designated Contracts, by no later than May 22, 2019, at 4:00 p.m. (Pacific Time), the Debtors shall file a notice containing a list of (a) the Cure Objections that have been resolved, and (b) the Cure Objections as to which Court intervention is required. As to the Cure Objections for which Court intervention is required, pursuant to the *Order*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Approving Omnibus Stipulation Continuing Hearing on Certain Objections to Notice and Supplemental Notice of Contracts Designated for Assumption and Assignment [Docket No. 2183], the deadline for the Debtors to reply to the Cure Objections shall be May 29, 2019, at 4:00 p.m. (Pacific Time). ~~the following briefing schedule shall apply: (1) the Debtors' opposition to each outstanding Cure Objection shall be submitted by no later than May 22, 2019; and (2) the counterparties' reply in support of its Cure Objections shall be submitted by no later than May 29, 2019.~~ Nothing in this Sale Order constitutes a finding or determination on any Cure Objection. All Cure Objections are preserved until resolved either by agreement between the Debtors and the contract counterparty or further order of the Court.

35. As to any executory contracts or unexpired leases that were listed on the Initial Designated Contract List, but not listed on any prior Cure Notice, any counterparty thereto may file an objection to the cure amount or assumption thereof by May 22, 2019, and all other provisions in paragraph 34 shall apply to resolution thereof.

36. As to Subsequently Identified Designated Contracts, (i) promptly upon SGM's identifying such contract(s), the Debtors shall file a notice with the Court identifying all Subsequently Identified Designated Contracts no later than 30 days prior to Closing and provide service thereof in accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated Contracts were not listed on a Cure Notice, counterparties subject to contracts who object to assumption and/or the proposed cure amounts must file an objection no later than 14 days prior to Closing, and any reply shall be filed no later than 7 days prior to Closing. To the extent that a negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently Identified Designated Contracts shall be adjudicated by the Court, which shall resolve any and all disputed issues related to the objection(s).

37. The California Attorney General, the Debtors, the Consultation Parties (as defined in the Bid Procedures Order) and SGM, reserve all rights, arguments and defenses concerning the California Attorney General's authority, if any, to review the sale under California Corporations Code §§ 5914–5924 and California Code of Regulations on Nonprofit Hospital Transactions—Title 11,

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Chapter 15, § 999.5, and any conditions issued thereto. Nothing in this Sale Order shall be construed as a waiver of the Attorney General's statutory and regulatory authority or other rights.

38. The Committee and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31 to 36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31 to 37 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

IT IS SO ORDERED.

###

Date: May 2, 2019

Ernest M. Robles
United States Bankruptcy Judge

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit J

Exhibit J

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General
KENNETH K. WANG
Deputy Attorney General
State Bar No. 201823
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6217
Fax: (213) 897-2805
E-mail: Kenneth.Wang@doj.ca.gov
Attorneys for Creditor
California Department of Health Care Services

IN THE UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re: **VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al.,** Debtor and Debtors In Possession.	CASE NO. 2:18-bk-20151-ER **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** Hearing: September 25, 2019 Time: 10:00 a.m. Courtroom: 1568 Judge Ernest M. Robles
/x/ 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 Dialysis, LLC,

Debtors and Debtors in Possession.

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PROCEDURAL BACKGROUND	2
STATUTORY BACKGROUND	2
I. Administration of the Medi-Cal Program	2
II. Medi-Cal Financing	3
III. Delivery of Medi-Cal Services	4
IV. Payments to Hospitals for Medi-Cal Services	5
V. Hospital Quality Assurance Fee	6
VI. Statutory Basis for Collection of HQA Fees	6
VII. Reimbursement of Medi-Cal Overpayments	7
VIII. The Department's Recoupment Right	8
FACTUAL BACKGROUND	9
I. St. Vincent Medical Center's HQA Fee Debt to Medi-Cal	9
II. Seton Medical Center's HQA Fee Debt to Medi-Cal	9
III. St. Francis Medical Center's HQA Fee Debt to Medi-Cal	10
IV. Medi-Cal Overpayments to Debtors	11
V. Debtors Continue as Medi-Cal Providers Post Petition	11
ARGUMENT	12
I. Medi-Cal Agreements Are Executory Contracts	12
II. Case Law Affirms that the Agreements Are Executory Contracts	15
III. The Agreements Cannot Be Sold Free and Clear of Debt Owed to Medi-Cal under 11 U.S.C. § 363	17
IV. The Agreements, as Executory Contracts, Require Cure of Defaults and Debts	22
V. Debtors' Agreements Require Successor Liability by the Buyer	23
VI. The Department Opposes Waiver of the 14-Day Stay of any Sale Order	24
CONCLUSION	24

TABLE OF AUTHORITIES

Page

CASES

Atkin v. Parker
472 U.S. 115 (1985) 19

Bell v. Burson
402 U.S. 535 (1971) 19

Cervoni v. Secretary of Health, Education and Welfare
581 F.2d 1010 (1st Cir. 1978) 19

Devine v. Cleland
616 F. 2d 1080 (9th Cir. 1980) 19

Erickson v. United States Department of Health and Human Services
67 F. 3d 858 (9th Cir. 1995) 19, 20

Green v. Cashman
605 F.2d 945 (6th Cir. 1979) 17, 18

Hollander v. Berezenoff
787 F.2d 834 (2nd Cir. 1986) 17, 18

In re BDK Health Management, Inc.
1998 WL 34188241 18

In re Berks Behavioral Health, LLC
2010 WL 4922173 (Bankr. E.D. Pa. 2010) 20

In re Gardens Regional Hospital and Medical Center, Inc.
2018 WL 1354334 ..... 8, 14

In re Gardens Regional Hospital and Medical Center, Inc.
569 B.R. 788 (Bankr. C.D. Cal. 2017) 8, 13, 15, 17

In re Hefferman Memorial Hospital District
192 B.R. 228 (S.D. Cal. 1996) 15, 16

In re Holland Enterprises, Inc. (*In re Holland*)
25 B.R. 301 (Bankr. E.D. N.C. 1982) 13, 23

TABLE OF AUTHORITIES
(continued)

Page

In re Holyoke Nursing Home, Inc.
372 F.3d 1 (1st Cir. 2004) 15, 16

In re Memorial Hosp. of Iowa County, Inc.
82 B.R. 478 (W. D. Wis. 1988) 16, 22

In re Monsour Medical Center
8 B.R. 606 (Bankr. W.D. Pa. 1981) 12, 16

In re Octagon Roofing
123 B.R. 583 (Bankr. N.D. Ill. 1991) 22

In re Slater Health Center, Inc.
294 B.R. 423 (Bankr. D. RI. 2003) 15

In re St. Mary Hospital
89 B.R. 503 (E.D. Pa. 1988) 23

In re: Thane International, Inc. v. 9472541 Canada Inc.
586 B.R. 540 (Bankr. D. Del. 2018) 22

In re Tidewater Memorial Hospital, Inc.
106 B.R. 876 (Bankr. E.D. Va. 1989) 24

In re University Medical Center
973 F.2d 1065 (3rd Cir. 1992) 15

In re Vitalsigns Homecare, Inc.
396 B.R. 232 (Bankr. D. Mass. 2008) 15

Koerpel v. Heckler
797 F.2d 858 (10th Cir. 1986) 19

Lin v. State of California
78 Cal. App. 4th 931 (Ct. App. 2012) 20

Maximum Care Home Health Agency v. HCFA, No. 3-97-CV-1451-R
1998 WL 901642 (N.D. Tex. April 14, 1998) 18

Mednik v. State Department of Health Care Services
175 Cal. App. 4th 631 (Ct. App. 2009) 14

TABLE OF AUTHORITIES
(continued)

Page

Richmond Leasing Co. v. Capital Bank, N.A.
762 F.2d 1303 (5th Cir. 1985) 23

Southeast Kansas Community Action Program v. Secretary of Agriculture of the United States
967 F.2d 1452 (10th Cir. 1992) 19

U.S. ex rel. Academy Health Center, Inc. v. Hyperion Foundation, Inc.
2014 WL 3385189 (S.D. Miss. 2014) 18

U.S. ex rel. Roberts v. Aging Care Home Health, Inc.
474 F. Supp. 2d 810 (W.D. La 2007) 18

STATUTES

11 U.S.C.
§ 363(f) 17, 21, 22
§ 365 24
§ 365(b) 22
§§ 1107(a) and 1108 2

42 U.S.C.
§ 1396a(a)(27) 17
§ 1396a 3
§ 1396b 3
§§ 1396b(a) and 1396d(b) 3
§ 1396b(w) 4

Cal. Code Regs. Title 22
§ 50004(b)(1) 3
§§ 51016-51048 7
§ 51047 7

TABLE OF AUTHORITIES
(continued)

Page

Cal. Welf. & Inst. Code
§ 10740 3
§ 14016.5(b) 4
§ 14063 3
§§ 14087.3-14089.8 4
§§ 14133 and 14170 7
§ 14169.50 6
§ 14169.50(b) 6
§ 14169.50(d) 7
§ 14169.51(*l*) 4
§ 14169.52(a) 6
§ 14169.52(h) 7, 8
§ 14169.53(b) 5
§ 14170(a)(1) 7
§ 14171 7
§ 14301.1 5

CONSTITUTIONAL PROVISIONS

Cal. Const., Article 16, § 3.5 6

COURT RULES

Bankruptcy Rule 6004(h) 24

Bankruptcy Rule 6006(d) 24

OTHER AUTHORITIES

42 C.F.R. §§ 433.50 – 433.74 4

42 C.F.R. § 433.51 3

HTTP://WWW.DHCS.CA.GOV/ 6

http://www.lao.ca.gov/BallotAnalysis/Proposition?number=52&year=2016 4

https://lao.ca.gov/ballot/2013/130602.aspx 5

TABLE OF AUTHORITIES
(continued)

Page

Fogel, *Executory Contracts and Unexpired Leases in the Bankruptcy Code*, 64 Minnesota Law Review 341, 344 (1980)..... 12

INTRODUCTION

California Department of Health Care Services (Department) hereby objects to the Motion for the Entry of an Order authorizing the sale of property free and clear of all claims, liens, and encumbrances (ECF No. 1279) and approving of the proposed Asset Purchase Agreement (Motion) (ECF No. 1279) between (i) Verity, Verity Holdings, LLC, a California limited liability company (Verity Holdings), St. Francis Medical Center, a California nonprofit public benefit corporation (St. Francis Medical Center), St. Vincent Medical Center, a California nonprofit public benefit corporation (St. Vincent Medical Center), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (St. Vincent Dialysis Center) and Seton Medical Center, a California nonprofit public benefit corporation (Seton Medical Center)(collectively Debtors) and (ii) Strategic Global Management. If this sale goes through as intended by Debtors, the Department will be precluded from meeting its statutory obligations to collect Hospital Quality Assurance Fees (HQA Fees) and overpayments.

The proposed Asset Purchase Agreement (APA) between Debtors and the Buyer misrepresents that the Agreements will be transferred as licenses. (APA 66, ECF No. 1279). Debtors' Medi-Cal Provider Agreements (hereafter, Agreements) are executory contracts that must be assumed and assigned to the Buyer. For the intended assumption and assignment to occur, either Debtors must pay all of the outstanding HQA Fees incurred before the closing of the sale or any outstanding HQA Fees on Debtors' account must be paid by the Buyer through joint and severally liability. In addition to the HQA Fee debt, Debtors and/or the Buyer must also reimburse the Department for any Medi-Cal overpayment and pay other debts owed to the Department.

Accordingly, Debtors must assume and assign the Agreements and pay the HQA Fee debt and other debts to the Department. Otherwise, the Buyer must be

ordered to be held jointly and severally liable for those debts under assumption and assignment of the Agreements. The proposed APA, to transfer the Agreements as licenses, without cure of the debts to the Department and without joint and several liability, cannot be approved by this Court.

If Debtors propose to pay the debt through the proceeds of the sale, the Department will agree to accept payment of the entire HQA Fee debt incurred by Debtors within five days of the closing of the Sale. Moreover, Debtors must establish and maintain a trust account in the amount of $70 million for 36 months for potential reimbursement to the Department of any Medi-Cal overpayment, with any excess overpayment over $70 million to be paid by the Buyer.[1]

PROCEDURAL BACKGROUND

On August 31, 2018 (Petition Date), Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. Debtors' cases are jointly administered with their affiliates and, pursuant to 11 U.S.C. §§ 1107(a) and 1108, Debtors continue to operate their businesses and manage their affairs as debtors-in-possession.

On January 17, 2019, Debtors filed the Motion for an order (a) approving form of the APA for the Buyer and for prospective orders, (b) approving procedures related to the assumption of certain executory contracts and unexpired leases, and (c) to sell their property free and clear of any claims, liens, and encumbrances. Motion, ECF No. 1279.

STATUTORY BACKGROUND

I. ADMINISTRATION OF THE MEDI-CAL PROGRAM

The federal Medicaid Act, enacted in 1965 as title XIX of the Social Security Act, is a federal-state administered Spending Clause program designed to provide

[1] Information related to the $70 million projection can be provided by the Department upon request.

medical assistance to eligible low-income individuals. 42 U.S.C. § 1396a & b (2019). The financing and administration of the Medicaid program are a cooperative effort between the federal government and participating states, as authorized under a federally approved State Medicaid Plan. Title 42 U.S.C. § 1396a, et seq., authorizes federal financial support to states for medical assistance provided to certain low-income persons. In California, this program is the California Medical Assistance Program, which is commonly known as Medi-Cal. Cal. Welf. & Inst. Code § 14063 (West 2019). The Department is the single state agency authorized to administer the Medi-Cal program. Cal. Welf. & Inst. Code § 10740 (West 2019); Cal. Code Regs. tit. 22, § 50004(b)(1) (2019).

II. MEDI-CAL FINANCING

The costs of the Medicaid program are generally shared between states and the federal government based on a set formula. 42 U.S.C. §§ 1396b(a) and 1396d(b) (2019). Except for certain covered populations or discrete service expenditures specified in 42 U.S.C. §§ 1396b or 1396d, the federal government reimburses medical assistance expenditures under California's State Medicaid Plan at a rate of 50%. When the Department makes expenditures for medical assistance covered under Medi-Cal, the Department claims the appropriate federal share of those costs at the appropriate federal medical assistance percentage. *Id.*

Federal Medicaid law permits states to finance the non-federal share of Medicaid costs through several sources, including but not limited to:

> State General Funds. State general funds are revenues collected primarily through personal income, sales, and corporate income taxes.

42 C.F.R. § 433.51 (2019).

> Charges on Health Care Providers. Federal Medicaid law permits states to (1) levy various types of charges – including taxes, fees, or assessments – on health care providers and (2) use the proceeds to draw down FFP (federal financial participation) to support the non-federal share of state Medicaid expenditures. These charges must meet certain requirements and be approved by CMS (Centers for Medicare &

> Medicaid Services of the United States Department of Health and Human Services) for revenues from these charges to be eligible to draw down FFP. A number of different types of providers can be subject to these charges, including hospitals.

42 U.S.C. § 1396b(w) (2019); 42 C.F.R. §§ 433.50 – 433.74 (2019).

The HQA Fee is a charge imposed by the Department on non-exempt hospitals to finance the non-federal share of specified Medi-Cal costs. Cal. Welf. & Inst. Code § 14169.51(*l*) (West 2019). The quarterly HQA Fee imposed upon non-exempt hospitals has been collected by the Department in similar form since 2009. The collected HQA Fees are used to support Medi-Cal expenditures and maximize available federal participation for Medi-Cal costs. *See* http://www.lao.ca.gov/BallotAnalysis/Proposition?number=52&year=2016.

III. DELIVERY OF MEDI-CAL SERVICES

The vast majority of Medi-Cal benefits are delivered through one of two systems: (i) the fee-for-service system and (ii) the managed care plan system. Cal. Welf. & Inst. Code § 14016.5(b) (West 2019). In the fee-for-service system, Medi-Cal contracts with and pays health care providers (such as physicians, hospitals, and clinics) directly for covered services provided to Medi-Cal beneficiaries. *Id.*, § 14132 et seq. (West 2019).

The Department also administers Medi-Cal through various managed care plans operated by public and private entities under contract pursuant to various statutory authorities. *See generally* Cal. Welf. & Inst. Code §§ 14087.3-14089.8; 14200, et. seq. (West 2019). In the managed care system, the Department contracts with managed care plans to provide the vast majority of covered services for enrolled Medi-Cal beneficiaries within a fixed geographic location. *See generally id.* at § 14087.3 et seq. (setting forth standards governing contracts between the Department and managed care providers) and § 14169.51(ab) (West 2019) (defining "managed health care plan" for purposes of the HQA Fee program).

Medi-Cal managed care enrollees may obtain non-emergency services from contracted providers – including hospitals – that accept payments from their health plans. The Department develops and pays an actuarially sound (capitation) rate per Medi-Cal beneficiary enrollee per month to contracted managed care plans. Cal. Welf. & Inst. Code § 14301.1 (West 2019).

IV. PAYMENTS TO HOSPITALS FOR MEDI-CAL SERVICES

The Department provides payments to approximately 400 licensed general acute care hospitals. *https://lao.ca.gov/ballot/2013/130602.aspx.* These hospitals are divided into three general categories (private hospitals, designated public hospitals (county and University of California), and non-designated public hospitals (district hospitals) based on whether the hospital is privately or publicly owned, and who operates the hospital. *Id.* Debtors are private hospitals.

Hospitals may receive several types of payments based on their participation in Medi-Cal, including direct payments from the Department, managed care payments from managed care plans, and supplemental payments from both the Department and managed care plans. https://lao.ca.gov/ballot/2013/130602.aspx.

Direct payments are payments to providers such as Debtor for providing covered services to Medi-Cal beneficiaries through the fee-for-service system. Managed care payments are payments from managed care plans to providers (including hospitals such as Debtor) for services delivered to Medi-Cal beneficiaries enrolled in these plans. The plans receive funds from the Department to pay the providers. https://lao.ca.gov/ballot/2013/130602.aspx.

Quality assurance payments are supplemental payments, supported by the HQA Fee revenue and federal matching funds, providing additional payments to Medi-Cal hospitals to supplement the Department's direct fee-for service payments and the managed care plans' payments to hospitals, including Debtor. Cal. Welf. & Inst. Code § 14169.53(b) (West 2019).

V. HOSPITAL QUALITY ASSURANCE FEE

California Assembly Bill 1383 established a program that imposed a quarterly HQA Fee to be paid by non-exempt hospitals, which would be used to increase federal financial participation in order to make supplemental payments to hospitals including private hospitals (such as Debtors), and to help pay for health care coverage for low-income children, for the period of April 1, 2009 through December 31, 2010. The California Legislature extended the HQA Fee program through December 31, 2016. Then, on November 8, 2016, California voters passed Proposition 52 continuing the HQA Fee program indefinitely from January 1, 2017, onward. *See* Cal. Const., art 16, § 3.5; HTTP://WWW.DHCS.CA.GOV/PROVGOVPART/PAGES/HOSPITALQUALITYASSURANCEFEEPROGRAM.ASPX.

More specifically, the Medi-Cal Hospital Reimbursement Improvement Act of 2013 (the Act) extended the imposition of the HQA Fee from January 1, 2014, through December 31, 2016. The Act was signed into law in October 2013 and is codified at California Welfare and Institutions Code sections 14169.50 through 14169.76. It was later made permanent pursuant to Proposition 52. Cal. Const., art 16, § 3.5. The Act requires non-exempt hospitals to pay a quarterly HQA Fee, which is assessed regardless of a hospital's participation in the Medi-Cal program. Cal. Welf. & Inst. Code § 14169.52(a) (West 2019).

VI. STATUTORY BASIS FOR COLLECTION OF HQA FEES

California Welfare and Institutions Code section 14169.50 sets forth the legislative purpose and intent for the HQA Fee program. "It is the intent of the Legislature that funding provided to hospitals through a hospital quality assurance fee be continued with the goal of increasing access to care and to improving hospital reimbursement through supplemental Medi-Cal payments to hospitals." Cal. Welf. & Inst. Code § 14169.50(b) (West 2019). "It is [also] the intent of the

Legislature to impose a quality assurance fee to be paid by hospitals, which would be used to increase federal financial participation in order to make supplemental Medi-Cal payments to hospitals, and to help pay for health care coverage for low-income children." Cal. Welf. & Inst. Code § 14169.50(d) (West 2019) (emphasis added). California Welfare and Institutions Code section 14169.52(h) provides the Department with the statutory remedy to recover the unpaid HQA Fee debt from Medi-Cal payments until the entire debt is recovered (recoupment).

VII. REIMBURSEMENT OF MEDI-CAL OVERPAYMENTS

Medi-Cal makes interim payments to an authorized Medi-Cal provider after it renders services and submits claims to Medi-Cal for payment. The Department later audits the claims for Medi-Cal payment submitted by Medi-Cal providers. Cal. Welf. & Inst. Code §§ 14133 and 14170 (West 2019). In that regard, the Department is statutorily authorized to audit and review a provider's cost report[2] within three years after the close of the period covered by the report, or after the date of submission of the original or amended report by the provider, whichever is later. Cal. Welf. & Inst. Code § 14170(a)(1) (West 2019).

If the audit indicates any overpayment, the provider must reimburse Medi-Cal for the overpayment. The Department may begin liquidation of any overpayment to a Medi-Cal provider 60 days after issuance of the first Statement of Accountability or demand for repayment. Cal. Code Regs. title 22, § 51047 (2019).

A provider can appeal the Department's audit findings. Cal. Code Regs. tit. 22, §§ 51016-51048 (2019). A Medi-Cal provider is entitled to a formal administrative hearing on any disputed overpayment. Cal. Welf. & Inst. Code § 14171 (West 2019).

///

---

[2] Cost reports and other data submitted by Medi-Cal providers are submitted to the Department for the purpose of determining reasonable costs for Medi-Cal services or establishing rates of Medi-Cal payment. Cal. Welf. & Inst. Code § 14170(a)(1) (West 2019).

VIII. THE DEPARTMENT'S RECOUPMENT RIGHT

The Agreements state that "[a]s a condition for participation . . . in the Medi-Cal program, Provider agrees to comply with all of the following terms and conditions . . . ." Hanh Vo Declaration (Vo Decl.), Exs. 1 & 2, at 1. Those terms and conditions include the requirement that Debtors comply with applicable law:

> 2. Compliance with Laws and Regulations. Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

Id.

California Welfare and Institutions Code section 14169.52(h) provides that "[w]hen a hospital fails to pay all or part of the quality assurance fee on or before the date that payment is due, the [Department] may immediately begin to deduct the unpaid assessment and interest from any Medi-Cal payments owed to the hospital . . . ." Cal. Welf. & Inst. Code § 14169.52(h) (West 2019).

Both this Court and the Bankruptcy Appellate Panel of the Ninth Circuit held that the imposition of the HQA Fees and the Department's recovery of the unpaid HQA Fees from payments intended for a provider/debtor satisfy the "same transaction" requirement for recoupment. *In re Gardens Regional Hospital and Medical Center, Inc.*, 569 B.R. 788, 797 (Bankr. C.D. Cal. 2017); *In re Gardens Regional Hospital and Medical Center, Inc.*, 2018 WL 1354334 *5 (BAP 9th Cir. 2018).

Based upon the case law and California statute, the Department can recover the unpaid HQA Fees from Medi-Cal payments intended for Debtors. *In re Gardens Regional Hospital and Medical Center, Inc.*, 569 B.R. at 796-797.

Accordingly, the Department may choose to recoup, offsetting any HQA Fee liabilities incurred by Debtors against any Medi-Cal payments intended for them or to the Buyer through successor liability. However, the Department is not required to do so, nor can it be compelled to exercise this equitable remedy.

FACTUAL BACKGROUND

I. ST. VINCENT MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL

St. Vincent Medical Center, as of September 6, 2019, has HQA Fee liabilities for Phase V in the amount of **$6,565,679.74**.

ST. VINCENT MEDICAL CENTER (NPI# 1124004304) (OSHPD# 106190762)					
PHASE V		AMOUNT DUE	AMOUNT PAID	WITHHELD	OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)				
2017/18	MANAGED CARE 2 (Directed B) (01/01/2018 - 06/30/2018)	$908,143.74	$0.00	$0.00	$908,143.74
2018/19	MANAGED CARE 3 (Passthrough) (07/01/2018 - 08/31/2018)	$2,828,768.00	$0.00	$0.00	$2,828,768.00
	MANAGED CARE 3 (Directed) (07/01/2018 - 08/31/2019)	$3,433,071.00	$0.00	$0.00	$2,828,768.00
Total Outstanding Balance					**$6,565,679.74**

Vo Decl., ¶ 11 - 14.

II. SETON MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL

Seton Medical Center, as of September 6, 2019, has outstanding HQA Fee liabilities for Phase V in the amount of **$16,927,759.87**, as shown below:

SETON MEDICAL CENTER (NPI# 1154428688) (OSHPD# 106410817)					
PHASE V		AMOUNT DUE	AMOUNT PAID	WITHHELD	OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)				
2017/18	CYCLE 3 (07/01/2017 - 09/30/2017)	$2,223,369.00	$0.00	$1,348,558.98	$874,810.02

	CYCLE 4 (10/01/2017 - 12/31/2017)	$2,223,368.94	$0.00	$0.00	$2,223,368.94
	CYCLE 5 (01/01/2018 - 03/31/2018)	$2,223,369.00	$0.00	$0.00	$2,223,369.00
	CYCLE 6 (04/01/2018 – 06/30/2018)	$2,223,369.00	$0.00	$0.00	$2,223,369.00
	MANAGED CARE 2 (Directed B) (07/01/2017 –	$671,377.91	$0.00	$0.00	$671,377.91
2018/19	**CYCLE 7** (07/01/2018 - 09/30/2018)	$2,293,835.00	$0.00	$0.00	$2,293,835.00
	CYCLE 8 (10/01/2018 - 12/31/2018)	$2,293,835.00	$0.00	$0.00	$2,293,835.00
	MANAGED CARE 3 (Passthrough) (07/01/2018- 08/31/2019)	$2,061,897.50	$0.00	$0.00	$2,061,897.50
	MANAGED CARE 3 (Passthrough) (07/01/2018- 08/31/2019)	$2,061,897.50	$0.00	$0.00	$2,061,897.50
Total Outstanding Balance					**$16,927,759.87**

Vo Decl., ¶ 11 - 14.

III. ST. FRANCIS MEDICAL CENTER'S HQA FEE DEBT TO MEDI-CAL

St. Francis Medical Center, as of August 23, 2019, has HQA Fee liabilities for Phase V in the amount of **$3,835,489.67**.

ST. FRANCIS MEDICAL CENTER (NPI# 1487697215) (OSHPD# 106190754)					
PHASE V		**AMOUNT DUE**	**AMOUNT PAID**	**WITHHELD**	**OUTSTANDING BALANCE**
FISCAL YEAR	**CYCLE (PERIOD)**				
2018/19	**Managed Care 2 (Directed B)** (01/01/2018 - 06/30/2018)	$1,888,160.53	$0.00	$0.00	$1,888,160.53
	Managed Care 3 (Passthrough) (07/01/2018 – 08/31/2018)	$973,664.57	$0.00	$0.00	$973,664.57

	MANAGED CARE 3 (07/01/2018-06/30/2019)	$973,664.57	$0.00	$0.00	$973,664.57
Total Outstanding Balance					**$3,835,489.67**

Vo Decl., ¶ 11 - 14.

IV. MEDI-CAL OVERPAYMENTS TO DEBTORS

For July 1, 2016, through June 30, 2017, the Department has determined, based on retroactive claim adjustments, that St. Francis was overpaid **$24,254,503.36** by Medi-Cal for hospital operations. Vo Decl., ¶ 15. For St. Francis, there are cost reports for fiscal years 2017/18, 2018/19, and 2019/20, that still need to be reviewed and/or audited by the Department.

Further, for July 1, 2016, through June 30, 2017, the Department has determined, based on retroactive claim adjustments, that Seton Medical Center was overpaid **$4,205.25** by Medi-Cal for hospital operations. Vo Decl., ¶ 16.

Also, St. Francis was overpaid by Medi-Cal in the amount of **$662,327.67** in supplemental reimbursements under the Supplemental Reimbursement for Construction Renovation Reimbursement Program. *See* Declaration of Shiela Mendiola.

V. DEBTORS CONTINUE AS MEDI-CAL PROVIDERS POST PETITION

Since the Petition Date, Debtors have continued to provide Medi-Cal services, have continued to submit claims to Medi-Cal for payment, and have continued to receive Medi-Cal payments. In other words, despite their bankruptcy filings, Debtors have remained in the Medi-Cal system, enjoying Medi-Cal provider benefits, such as direct payments from the Department, managed care payments from managed care plans, and supplemental payments from both the Department and managed care plans.

///

ARGUMENT

I. MEDI-CAL AGREEMENTS ARE EXECUTORY CONTRACTS

Contrary to the representations in the proposed APA, the Agreements cannot be transferred as licenses. They must be assumed and assigned as executory contracts.

The Bankruptcy Code does not define the term "executory contract"; however, the legislative history of 11 U.S.C. § 365 leaves no doubt that an executory contract is one "in which neither side has fully performed at the commencement of bankruptcy." *In re Monsour Medical Center*, 8 B.R. 606, 612 (Bankr. W.D. Pa. 1981), aff'd 11 B.R. 1014 (W.D. Pa. 1981) (citing Fogel, *Executory Contracts and Unexpired Leases in the Bankruptcy Code*, 64 Minnesota Law Review 341, 344 (1980). The legislative history provides:

> Though there is no precise definition of what contracts are executory, it generally includes contracts on which performance remains due to some extent on both sides. A note is not usually an executory contract if the only performance that remains is repayment. Performance on one side of the contract would have been completed and the contract is no longer executory.

Id.

This interpretation of the term "executory contract" is in accord with the view adopted by commentary and case law discussing Section 70(b) of the former Bankruptcy Act, the provision from which 11 U.S.C. § 365 is derived, that an executory contract is one "under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other." *In re Monsour Medical Center*, 8 B.R. at 612-613 (citing Countryman, *Executory Contracts in Bankruptcy: Part 1*, 57 Minn. L. Rev. 439, 460 (1973); *Chattanooga Mem. Park v. Still*, 574 F.2d 349, 352 (6th Cir.), cert. denied, 439 U.S. 929, 99 S. Ct. 316, 58 L. Ed. 2d 322 (1978).) In other words, executory contracts include contracts where, to some extent, performance remains

due from both parties. *In re Holland Enterprises, Inc.* (*In re Holland*), 25 B.R. 301 (Bankr. E.D. N.C. 1982) (citing *In re Rovine Corp.*, 5 B.R. 402, 404 (W.D. Tenn. 1980).

To become entitled to receive Medi-Cal payments as Medi-Cal providers, Debtors were required to enter into Agreements with the Department. *In re Gardens Regional Hospital and Medical Center, Inc.* (*In re Gardens*), 569 B.R. 788, 792 (Bankr. C.D. Cal. 2017). Debtors' eligibility to participate in the Medi-Cal program is conditioned upon its consent to the terms of the Agreements. *In re Gardens*, 569 B.R. at 796-97. In that regard, the Agreements specifically emphasize:

> **AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE.**

Declaration of Hanh Vo (Vo Decl.), Exs. 1 – 4, at 1 (original emphasis).

Debtors have alleged that Medicare and Medicaid provider agreements are not contracts because there was no consideration by the parties to the agreements. In that regard, Debtors erroneously allege that the provider agreements: (1) merely informs the provider to applicable rules and statutes, which it has a preexisting legal duty to do so, (2) provides no benefits to Medicare or Medi-Cal, and (3) imposes no duties on Medicare or Medi-Cal other than to follow existing statutes and regulations.

When Debtors contracted with the Department to participate in Medi-Cal, they agreed to not only comply with applicable law governing Medi-Cal providers, but also agreed to explicit payment and reimbursement terms that are expressly set forth in the Agreements. Debtors' voluntary consent to those contractual provisions is consideration for the Department to contract with Debtors, allowing Debtors to participate in the Medi-Cal system and receive payments in the millions to tens of

millions of dollars. As a governmental entity, the Department and Medi-Cal are guided by public policy considerations when contracting with providers to provide medical treatment and services to Medi-Cal beneficiaries. *In re Gardens Regional Hospital and Medical Center, Inc.*, 2018 WL 1354334 *6. As affirmed by the California Court of Appeal, the relationship between a Medi-Cal provider and the Department is contractual in nature. *Mednik v. State Department of Health Care Services* 175 Cal. App. 4th 631, 642 (Ct. App. 2009).

The parties' consideration for the Agreements is indisputably exemplified by the following terms and conditions specified in the Agreements:

(1) Debtors must comply with all applicable state law and be subject to all sanctions available to the Department, if they fail to do so. Vo Decl., Ex. 5, ¶ 2, at 1.

(2) Debtors cannot submit any treatment authorization requests or claims to the Department using a National Provider Identifier (NPI) unless that NPI is appropriately registered to Debtors and is in compliance with all NPI requirements. *Id.*, ¶ 3, at 2.

(3) Debtors cannot engage in any conduct inimical to the public health, morals, welfare, and safety of any Medi-Cal beneficiary, or to the fiscal integrity of the Medi-Cal system." *Id.*, ¶ 4, at 2.

(4) Debtors cannot "exclude or deny aid, care, service, or other benefits available under Medi-Cal or in any other way discriminate against any Medi-Cal patients because of that person's race, color, ancestry, marital status, national origin, gender, age, economic status, physical or mental disability . . . ." *Id.*, ¶ 5, at 2.

(5) Health care services provided by Debtors must be by qualified personnel for conditions that cause "suffering, endanger life, result in illness or infirmity, interfere with capacity for normal activity, including employment, or for conditions which may develop into some significant handicap or disability." *Id.*, ¶ 6, at 2.

(6) Any overpayment must be repaid by Debtors in accordance with applicable federal and California statutes, regulations, and rules and policies of the Department, and the Department may recoup any overpayment from monies otherwise payable to Provider under the Agreement. *Id.*, ¶ 23, at 4.

(7) Debtors are subject to certain automatic and permissive suspensions and mandatory and permissive exclusions. *Id.*, ¶ 25, at 4.

Given the continuing nature of the duties imposed upon Debtors and the Department by both the Agreement and applicable law, Debtors' Agreements are executory contracts. Under the Agreements, Debtors must continue to comply with the express terms of the Agreement with regard to providing care to Medi-Cal beneficiaries and for conducting themselves as Medi-Cal providers, in order to avoid breaching the Agreement and remain in the Medi-Cal system as an authorized provider. Moreover, as the First Circuit found for Medicare provider agreements, Debtors' respective Agreement constitutes a single, ongoing, and integrated transaction. *In re Holyoke Nursing Home, Inc.*, 372 F.3d 1, 5 (1st Cir. 2004).

II. CASE LAW AFFIRMS THAT THE AGREEMENTS ARE EXECUTORY CONTRACTS

The Agreements are similar in many respects to the Medicare Provider Agreement. *In re Gardens*, 569 B.R. at 799 n.12. "A majority of bankruptcy courts considering the Medicare-provider relationship conclude that the Medicare provider agreement, with its attendant benefits and burdens, is an executory contract.") *In re Vitalsigns Homecare, Inc.*, 396 B.R. 232, 239 (Bankr. D. Mass. 2008) (citing *In re University Medical Center*, 973 F.2d 1065, 1075 and n.13 (3rd Cir. 199). "The [Medicare] Provider Agreement is a unique type of contract." *In re University Medical Center*, 973 F.2d at 1081 (quoting *University Medical Center*, 122 B.R. 919, 930 (E.D. Pa. 1990)). "The Medicare Provider Agreement is a contract providing for advance payments based on estimates and expressly permitting the withholding of overpayments from future advances." *In re Hefferman Memorial Hospital District*, 192 B.R. 228, 231 n. 4 (S.D. Cal. 1996). "Medicare provider agreements are executory in nature, calling for future performance by both parties until either party requests termination, and thus are subject to § 365." *University Medical Center*, 122 B.R. at 919.

Case law consistently holds that a Medicare provider agreement easily fits within this definition of executory contract. *In re Slater Health Center, Inc.*, 294

B.R. 423, 432 (Bankr. D. RI. 2003) (citing *In re University Medical Center*, 973 F.2d at 1075.) A Medicare provider agreement is an executory contract. *In re Hefferman Memorial Hospital District*, 192 B.R. at 231 n.4. Most courts have concluded that a provider agreement is an executory contract subject to assumption or rejection by a debtor-in-possession. [Internal citations omitted.]" *In re St. Johns Home Health Agency Co.*, 173 B.R. 238, 242 n.1 (S.D. Fl. 1994).

> As we conclude that Congress contemplated that the Medicare provider agreements would constitute a single, ongoing, and integrated transaction, the equitable powers of the bankruptcy court do not entitle it to second-guess Congress's implicit policy choices. *Both by statute and by contract* [emphasis added], the HCFA [Health Care Financing Administration] has the unqualified right to recoup those overpayments *in full* [original emphasis], and to return the funds to the public fisc, where they can be used to fund other facilities providing care to Medicare beneficiaries.

In re Holyoke Nursing Home, Inc., 372 F.3d at 5.

In re Monsour Medical Center involved the determination of the Medicare contractual relationship between a medical center and the government. The bankruptcy court found that the medical center and the government were parties to two executory contracts as of the date of the filing of the petition and approved the medical center's assumption of the executory contracts. *In re Memorial Hosp. of Iowa County, Inc.*, 82 B.R. 478, 482-483 (W. D. Wis. 1988) (explaining *In re Monsour Medical Center*).

In *In re Hefferman*, the bankruptcy court of the Southern District of California stressed:

> The Medicare Provider Agreement is a contract, providing for advance payments based on estimates and expressly permitting the withholding of overpayments from future advances. Most recoupment cases involve the *type of contract involved in this case* . . . .

In re Hefferman Memorial Hospital District, 192 B.R. at 231 n.4 (emphasis added).

Accordingly, given that courts have consistently held that Medicare Provider Agreements are executory contracts, Medi-Cal Provider Agreements are also executory contracts as the two agreements are similar in many respects. *In re*

Gardens Regional Hospital and Medical Center, Inc., 569 B.R. at 800, n.12.

III. THE AGREEMENTS CANNOT BE SOLD FREE AND CLEAR OF DEBT OWED TO MEDI-CAL UNDER 11 U.S.C. § 363

Debtors have erroneously argued that Medicare/Medi-Cal Provider Agreements provide them with a "statutory entitlement" to bill Medicare and Medi-Cal, which effectively makes the provider agreements akin to licenses to continue to participate in the Medicare and Medi-Cal programs. Because they are licenses, according to Debtors' erroneous analysis, the provider agreements can be sold as property of their estate, free and clear of any debt under 11 U.S.C. § 363(f).

Debtors have erroneously cited *Hollander* for the proposition that their relationship with Medicare or Medi-Cal is merely a "statutory relationship," rather than a contractual one. *Hollander v. Berezenoff*, 787 F.2d 834, 839 (2nd Cir. 1986). In *Hollander*, the Medicaid provider, a former licensed operator of several nursing homes that provided Medicaid services in New York State, claimed that it was undercompensated by the New York City Department of Social Services in violation of the Social Security Act and New York Medicaid statutes. On appeal, the provider asserted that its "provider agreements controll[ed] its relationship" with the New York City Department of Social Services. *Id.*, at 838. In response, the Second Circuit noted that "a provider must agree to the terms of these agreement in order to become a recognized health care facility under the Medicaid statutes, and while the Medicaid statute regulates the contents of these agreements, 42 U.S.C. § 1396a(a)(27), and gives providers a right to reimbursement, whatever rights a provider has arise exclusively from the executed Medicaid provider agreement." *Id.*, at 838 (citing *Green v. Cashman*, 605 F.2d 945, 946 (6th Cir. 1979).) As further noted by the Second Circuit, a "provider agreement may achieve a status of their own as contracts." *Hollander*, 787 F.2d at 838.

Nonetheless, the Medicaid provider agreement in *Hollander* did not contain any provision or language related to reimbursement rights. *Hollander*, 787 F.2d at

838. Without any specific reimbursement provision in the provider agreements from which the court could determine proper compensation, the Second Circuit defaulted to the statute to make that determination. In so doing, the Second Circuit merely explained that a provider's right may be "statutorily determined" if those rights are not explicitly provided for in the agreement." *Id.*, at 839. Accordingly, *Hollander* neither supports Debtors' position, nor does it undermine the well-established law that a Medicare or Medi-Cal Agreement is an executory contract.

In further support of their argument that Debtors have a statutory entitlement to bill Medicare and Medi-Cal because provider agreements are not contracts, Debtors cite *U.S. ex rel. Academy Health Center, Inc. v. Hyperion Foundation, Inc.*, 2014 WL 3385189 (S.D. Miss. 2014), *Maximum Care Home Health Agency v. HCFA, No. 3-97-CV-1451-R*, 1998 WL 901642 *5 (N.D. Tex. April 14, 1998), and *U.S. ex rel. Roberts v. Aging Care Home Health, Inc.*, 474 F. Supp. 2d 810 (W.D. La 2007). Debtors have also cited a bankruptcy court's order in *In re BDK Health Management, Inc.* as legal authority that they have statutory entitlements, not contractual rights, to bill Medicare and Medi-Cal. *In re BDK Health Management, Inc.*, 1998 WL 34188241 *6 (not reported in B.R.) (citing *Hollander v. Brezenoff*, 787 F.2d 838-839). Debtors' reliance upon these legal authorities is misplaced. The cited cases contravene the Ninth Circuit's holding that Medi-Cal providers have no statutory rights or entitlements to continue to participate in Medi-Cal, as further explained below. Also, those cases contradict the holdings by the Sixth Circuit (*Green v. Cashman*, 605 F.2d at 946) that provider agreements are contracts and whatever rights a Medicaid provider has arise "exclusively from a contract called a 'Provider' agreement," which was observed by the Second Circuit in *Hollander*.

The Ninth Circuit and other circuits have firmly held that providers are not entitled to continued participation in Medicare and Medicaid program (including

Medi-Cal). Accordingly, the providers have no statutory entitlement to continue to bill Medi-Cal. They lack a protectable property interest to do so.

If a benefit is a "matter of statutory entitlement for persons qualified to receive them," a property interest in that benefit is created. *Goldberg v. Kelly*, 397 U.S. 254, 262, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). Property interest arises from a statutory entitlement. *Southeast Kansas Community Action Program v. Secretary of Agriculture of the United States*, 967 F.2d 1452, 1457 (10th Cir. 1992). Food-stamp benefits are a matter of statutory entitlement for persons qualified to receive them, and thus are appropriately treated as a form of "property." *Atkin v. Parker*, 472 U.S. 115, 128, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985). Statutory entitlement of eligible veterans to receipt of educational assistance constitute a property interest. *Devine v. Cleland*, 616 F. 2d 1080, 1086 (9th Cir. 1980). A state issued license for the continued pursuit of the licensee's livelihood creates a property interest. *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971).

The Tenth Circuit held that a Medicare provider such as a physician had no property interest in his eligibility for Medicare reimbursement. A provider is not the intended beneficiary of the Medicare program; thus, the provider has no protectable property interest in the Medicare program. *Koerpel v. Heckler*, 797 F.2d 858, 863-65 (10th Cir. 1986). Similarly, the First Circuit concluded that a provider has no protectable property interest in his participation in Medicare. *Cervoni v. Secretary of Health, Education and Welfare*, 581 F.2d 1010 (1st Cir. 1978).

In *Erickson v. United States Department of Health and Human Services*, the district court granted an injunction to plaintiffs, a Medicare provider, to prohibit the Secretary of Health and Human Services from excluding them from federally-funded health care programs. On appeal, the Ninth Circuit followed the reasoning of the First and Tenth Circuits in *Koerpel* and *Cervoni* and held that plaintiffs were

not entitled to the continued participation in Medicare/Medicaid programs. Plaintiffs failed to show entitlement, including statutory entitlement, for continued participation in those programs; therefore, they have no property interest in continued participation in those programs. *Erickson v. United States Department of Health and Human Services*, 67 F. 3d 858, 862 (9th Cir. 1995). Similarly, the California Court of Appeal in *Lin v. State of California*, 78 Cal. App. 4th 931 (Ct. App. 2012) held that providers of Medicare and Medicaid services have no protected interests in continued participation in those programs. *Id.*, at 935. Accordingly, Debtors' do not have any statutory entitlement to bill Medi-Cal. Instead, their ability to retain their Medi-Cal provider status and to provide Medi-Cal services and bill for those services, depends upon their ongoing fulfilment of duties and obligations required by the Agreements.

Consistent with the Ninth Circuit holding that providers have no property interests in their continued participation in Medicare or Medicaid, a bankruptcy court specifically declared that a Medicare Provider Agreement, and similarly, the Medi-Cal Provder Agreement, cannot be sold as an asset under 11 U.S.C. § 363, free and clear of any debt.

> Notwithstanding . . . anything in the Motion or Purchase Agreement to the contrary, *the Medicare Provider Agreement shall not be considered an "asset" that may be sold pursuant to section 363 of the Bankruptcy Code and shall be treated as an executory contract subject to the Assumption and Assignment Procedures*. Assumption and assignment of the Medicare Provider Agreement shall require, as a cure, successor liability on the part of the Buyer for liabilities under the Medicare Provider Agreement.

In re Berks Behavioral Health, LLC, 2010 WL 4922173, 7 (Bankr. E.D. Pa. 2010) (emphasis added).

Consistent with the First, Ninth, and the Tenth Circuits as well as the California Court of Appeal, Debtors' Agreements explicitly assert that no property interests exist in or to the providers' status (such that they can be sold as an asset under 11 U.S.C. § 363). Instead, the Agreements expressly state that any rights or

obligations associated with the Agreements, as executory contracts, may only be assigned and assumed with successor liability.

> Provider agrees that it has no property right in or to its status as a Provider in the Medi-Cal program or in or to the provider number(s) assigned to it, and that Provider may not assign its provider number for use as a Medi-Cal provider, or any rights or obligations it has under [the] Agreement, *except to the extent purchasing owner is joining this provider agreement with successor joint and several liability.*"

Vo Decl., Ex 5, ¶ 37, at 8, (emphasis added).

Aside from the fact that Debtors have no property interests to continue to participate in the Medi-Cal system, 11 U.S.C. § 363(f) does not allow Debtors to sell their Agreements free and clear of any debt or successor liability. Under 11 U.S.C. § 363(f), property can be sold free and clear of any interest in that property of an entity other than the estate, only if:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or
> (5) such entity can be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Here, none of the above requisite elements of 11 U.S.C. § 363(f) apply. For the first criteria, as shown above, non-bankruptcy law does not permit sale of Debtors' Agreements as assets, free and clear of any debt. The Ninth Circuit specifically held that providers have no property interest in their continued participation in Medi-Cal. Accordingly, the Agreements make clear that Debtors have no property rights in or to their status as Medi-Cal Providers. Rather than being assets that can be sold, the Agreements and any rights and obligations therein can only be assigned with successor liability. Vo Decl., Exs. 4, ¶ 36, at 8.

With regard to second and third criteria, they are inapplicable because the Department has not consented to the sale of the Agreements as Debtor's assets or property and no lien interests are involved here.

For the fourth criteria, there is no bona dispute regarding the assumption and assignment of the Agreements with successor liability. "A bona fide dispute exists when there is an objective basis for either factual or legal dispute as to the validity of an interest in property." *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). As shown above, both the Debtors and the Buyer know and acknowledge in the APA that the Agreements can only be assumed and assigned with the Department's agreement. APA, § 8.8, ECF No. 365-1, Ex. A.

For the fifth criteria, the Department cannot be compelled to accept a money satisfaction in exchange for its rights to prevent a sale of Debtors' Medi-Cal provider status or Debtors' benefits, duties and obligations under the Agreements.

Accordingly, Debtors cannot sell their Medi-Cal Provider Agreements, free and clear of any debt under 11 U.S.C. § 363(f). The Agreements can only be assumed and assigned with successor liability.

IV. THE AGREEMENTS, AS EXECUTORY CONTRACTS, REQUIRE CURE OF DEFAULTS AND DEBTS

It is well settled that the curing of all defaults is an essential pre-condition to assumption of a contract under 11 U.S.C. § 365(b). "Cure is a critical component of assumption." *In re: Thane International, Inc. v. 9472541 Canada Inc.*, 586 B.R. 540, 549 (Bankr. D. Del. 2018). When an executory contract is assumed, valid claims for default must be cured by the debtor. *In re Memorial Hospital of Iowa County, Inc.*, 82 B.R. 478, 481 (Bankr. W.D. Wis. 1988).

Accordingly, all HQA Fee debt and other debts to the Department must be paid by Debtors or be assumed jointly and severally by the Buyer.

V. DEBTORS' AGREEMENTS REQUIRE SUCCESSOR LIABILITY BY THE BUYER

A party must accept the contract as a whole, meaning that a party cannot choose to accept the benefits of the contract and reject its burdens to the detriment of the other party to the agreement. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985) (citing *In re Holland*, 25 B.R. 301). It is axiomatic that an assumed contract under 11 U.S.C. § 365 is accompanied by its provisions and conditions. *In re Holland*, 25 B.R. at 303 (citing *Atchison, Topeka & Santa Fe Ry Co. v. Hurley*, 153 F. 403 (8th Cir. 1907), aff'd 213 U.S. 126, 29 S. Ct. 466, 53 L. Ed. 729 (1909)). "Assumption or rejection of an executory contract requires an all-or-nothing commitment going forward, and then a debtor cannot assume part of an executory contract in the future while rejecting another part." *In re St. Mary Hospital*, 89 B.R. 503, 509 (E.D. Pa. 1988).

An executory contract must be assumed or rejected *in toto*. *In re Holland*, 25 B.R. at 303. "To hold otherwise, would construe the bankruptcy law as providing a debtor in bankruptcy with greater rights and powers under a contract than the debtor had outside the bankruptcy." *Id.* (citing *In re Nashville White Trucks, Inc.*, 5 B.R. 112, 117 (Bankr. M.D. Tenn.)).

> The Court remains cognizant of the legislative purpose behind section 365. This provision vests the bankruptcy court with a unique power designed to facilitate the rehabilitation of debtors. Nevertheless, a debtor may not retreat to this provision, derived from the inherent equitable powers of the bankruptcy courts, to avoid an obligation while it enjoys a benefit which arises in conjunction with that obligation.

In re Holland, 25 B.R. at 303.

Accordingly, if the Buyer assumes the Agreements, then the Buyer will be held jointly and severally liable for any debt owed by Debtors to the Department, including unpaid HQA Fees and any Medi-Cal overpayments to Debtors, as Debtors' Agreements specifically mandate. In addition, under the Agreements, the Buyer will be subject to Department's recoupment for any unpaid HQA Fees and

Medi-Cal overpayments owed by Debtors. 11 U.S.C. § 365. "It is hornbook law that a debtor cannot assume the benefits of an executory contract while rejecting the burdens." *In re Tidewater Memorial Hospital, Inc.*, 106 B.R. 876, 884 n.9 (Bankr. E.D. Va. 1989).

If Debtors are allowed to sell, transfer, and assign the Agreements, as licenses, without paying their HQA Fee liabilities or requiring the Buyer to assume those liabilities jointly and severally, then Debtors and the Buyer would be allowed to divorce the benefits from the burdens of the Agreements and undermine the HQA Fee system. They would receive the benefits of Debtors' Agreements including Medi-Cal service payments and quality assurance payments, while disregarding the obligations of the same Agreements, including successor liability for any HQA Fee debt and other debts incurred by Debtors to the Department. The Court should not permit such a result.

VI. THE DEPARTMENT OPPOSES WAIVER OF THE 14-DAY STAY OF ANY SALE ORDER

Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Department objects to the requested waiver of the 14-day stay of the order on the Motion. The purpose of the Rule 6004(h) stay is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Because the payment of the QA Fee and Medi-Cal overpayment is a significant public concern involving millions of dollars, the Department will need the full 14-day period to appeal the order, if necessary.

CONCLUSION

For the foregoing reasons, the proposed APA, to transfer the Agreements as licenses, without cure of the debts to the Department and without joint and several liability, cannot be approved by this Court. Debtors must assume and assign the

Agreements and pay the HQA Fee debt and other debts to the Department. Otherwise, the Buyer must be ordered to be held jointly and severally liable for those debts under assumption and assignment of the Agreements.

Dated: September 11, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General

/s/ Kenneth K. Wang
KENNETH K. WANG
Deputy Attorney General
Attorneys for Creditor
Department of Health Care Services

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General
KENNETH K. WANG
Deputy Attorney General
State Bar No. 201823
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6217
Fax: (213) 897-2805
E-mail: Kenneth.Wang@doj.ca.gov
Attorneys for Creditor
California Department of Health Care Services

IN THE UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re:

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

Debtor and Debtors In Possession.

CASE NO. 2:18-bk-20151-ER

DECLARATION OF HANH VO IN SUPPORT OF 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

Hearing: TBD
Time: TBD
Courtroom: 1568
Judge Ernest M. Robles

/x/ 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 Dialysis, LLC, Debtors and Debtors in Possession.

I, Hanh Vo, declare:

1. I am currently a Staff Services Manager III, serving as Chief of the General Collections Branch of the Third Party Liability and Recovery Division of the California Department of Health Care Services (Department). I have been employed by the Department since September 2007. In that capacity, I have personal knowledge of the matters stated herein.

2. My responsibilities as Staff Services Manager III, Chief of the General Collections Branch, include management oversight of all activities performed by three collection units of the Department, the Quality Assurance Fee (QAF) Units A & B, and the Overpayments Unit.

3. Attached as Exhibit 1 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for St. Vincent Medical Center, Inc., which was executed on or about October 15, 2009.

4. Attached as Exhibit 2 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for St. Francis Medical Center, which was executed on or about August 16, 2010.

5. Attached as Exhibit 3 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for Seton Medical Center, which was executed

on or about October 2010.

6. Attached as Exhibit 4 to this declaration is a true and correct copy of the Medi-Cal Provider Agreement for Saint Vincent Dialysis Center, Inc., which was executed on or about March 7, 2011.

7. Attached as Exhibit 5 is a true and correct copy of the sample Medi-Cal Provider Agreement that was in effect in or about 2009 through 2011.

8. Based upon my personal knowledge and having reviewed Exhibits 1 through 5, I know that the substantive terms and provisions contained in these Medi-Cal Provider Agreements are similar.

9. I have reviewed the attached Hospital Quality Assurance Fee (HQA Fee) debt summaries for St. Vincent Medical Center, Inc., for St. Francis Medical Center, and for Seton Medical Center, which were prepared at my direction.

10. The calculation of the HQA Fee debt for these three hospitals is based upon the HQA Fee model.

11. The HQA Fee debt summaries are divided into six columns, which are described below:

(A) FISCAL YEAR – This term refers to the fiscal year period. The HQA Fee fiscal year is from July 1 through June 30.

(B) CYCLE (PERIOD) – This term refers to the period included under each HQA Fee payment cycle. HQA Fee cycles for Medi-Cal fee-for-service system are quarterly, and HQA Fee cycles for Medi-Cal Managed Care system cover all or the portion of the fiscal year included in the program phase.

(C) AMOUNT DUE – This term refers to the amount owed by the Debtor as determined by the HQA Fee model.

(D) AMOUNT PAID – This term refers to the amount from the Debtor applied to the AMOUNT DUE of a particular HQA Fee PERIOD.

(E) WITHHELD – This term refers to the amount collected through Medi-

Cal claims offset from the Debtor's Medi-Cal check writes and applied to the AMOUNT DUE of a PERIOD.

(F) OUTSTANDING BALANCE – This term refers to the amount of the HQA Fee debt that remains owed by the Debtor.

12. With regard to the noted amounts due for the Managed Care cycles, the amounts stated are estimates and are subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

13. Based upon my review of the attached HQA Fee debt summaries, I certify that total amount of HQA Fee debt for St. Vincent Medical Center (NPI No. 1124004304 and OSHPD No. 106190762) for Phase V (January 1, 2017 through June 30, 2019) is $6,565,679.74, for Seton Medical Center (NPI No. 1154428688, OSHPD No. 106410817) for Phase V is $16,927,759.87, and for St. Francis Medical Center (NPI No. 148769215, OSPHD No. 106190754) for Phase V is $3,835,489.67.

14. A true and correct copy of the debt summaries for St. Vincent Medical, Seton Medical Center and St. Francis Medical Center is attached to this declaration as Exhibit 6.

15. For July 1, 2016, through June 30, 2017, the Department has determined, based on retroactive claim adjustments, that St. Francis was overpaid **$24,254,503.36** by Medi-Cal for hospital operations.

16. Further, for July 1, 2016, through June 30, 2017, the Department has determined, based on retroactive claim adjustments, that Seton Medical Center was overpaid **$4,205.25** by Medi-Cal for hospital operations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of September 2019, at Sacramento, California.

Hanh Vo

EXHIBIT 1

BOX NO.. 5048 Number of Pages: 8

SCAN ONLY COVER SHEET

Submitted By: Gerred B Smith Date: 6/23/10

PLEASE SCAN THE FOLLOWING DOCUMENTS TO:

Group/Provider Name: St. Vincent Medical Center

Main Provider Number: (Or NPI number) 1124004304

Other Provider Number(s):

PED Document Number: 394285

✓ **CHECK the appropriate Doc Type/Alias title below to indicate where document should be scanned. Attach this form to the document and place in the SCAN ONLY BOX.**

	DOC TYPE	ALIAS		DOC TYPE	ALIAS
☐	Address Change	ADDRCHNG	☐	Provider Master File Screen Shot	PMFSCRN
☐	Application	APP	☐	Procedure Code	PROCODE
☐	Archive File	ARCHIVE FILE	☐	Rates	RATES
☐	CCS/GHPP & CHDP	CCS/GHPP& CHDP	☐	Re-Enrollment	RECORR
☐	CD173 (returned warrant)	CD173	☐	Returned Mail	RTNMAIL
☐	Change of Ownership	CHOW	☐	Scanned Document	SCANNED
☐	CMC Agreements	CMC	☐	Settlement Agreement	STLMNT
☐	Correspondence	CORR	☐	State Controller's Office Letter	SCOLETTER
☐	Deactivation	DEACTREQUEST	☐	Special Claims Review/Provider Prior Authorization	SCRPPA
☐	Deficiency Letter	DEFLTR			
☐	Denial/Denied/Appeal	DENIED	☐	Status Change	STATCNG
☐	E-Mail	EMAIL	☐	Supplemental Application	SUPAPP
☐	Family Pact	FPACT	☐	Surety Bonds	SURETY
☐	Gatekeeper Request	GATEKPRRQUEST	☐	Suspended & Ineligible/Appeal	SUSPINE
☐	Letter	LETTER	☐	Temp Suspension Request	TEMPSUSPREQUT
☐	Local Education	LEA	☐	Vehicle	VEHICLE
☐	Memo	MEMO	☐	Withdrawal Request	WITHDRAWL
☐	Miscellaneous	MISC	☐	Withhold	WITHHOLD
☐	Moratorium	MORTRM	☐	Watermark Converted	WMCONVERT
☐	Non Provider	NONPROVIDER	☐	X-Reference	XREF
☐	Old PEEPS Converted	OLDPEERS	☒	Other	OTHER

ALL DOCUMENTS NOT COMPLETELY FILLED OUT WILL BE RETURNED

PSS070

PROVIDER: 213484 OWNER: OS LOCATION: 001
LEGAL NAME: ST VINCENT MEDICAL CTR

BUSINESS NAME: ST VINCENT MEDICAL CTR TELEPHONE NO: 213-484-7111

	PAY TO ADDRESS	SERVICE ADDRESS	MAIL TO ADDRESS
ATT:			
LN1:	FILE #52675	2131 W 3RD ST	2131 W 3RD ST
LN2:			
CTY:	LOS ANGELES	LOS ANGELES	LOS ANGELES
ST:	CA ZIP: 90074 - 2675	CA ZIP: 90057 - 1901	CA ZIP: 90057 - 1901
		DATA FROM ADDRESS DATABASE	
LN1:			
LN2:			
CTY:			
ST:	ZIP: -	ZIP: -	ZIP: -

COUNTY CODE: 19 DATABASE COUNTY: PSRO REGION CODE: 24
MAIL ADDRESS IND: Q OUT OF STATE: 0
CON AREA IND: C EFF DATE: 04/01/1983 END DATE: 12/31/2069
FAC ADMINSTRATOR: BRIAN CONNOLLY

PF3=RETURN PF4=PROVIDER DETAIL CLEAR=MENU

Mailing & Pay to

399285

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY
GACH
05-0502

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date: 10-15-09

Legal name of applicant or provider (as listed with the IRS)	Business name (if different than legal name)		
St. Vincent Medical Center, Inc.	St. Vincent Medical Center		
Provider number (NPI number)		Business Telephone Number	
1124004304 SV		(213) 484 - 7111	
Business address (number, street)	City	State	Nine-digit ZIP code
2131 West Third Street	Los Angeles	CA	90057-0992
Mailing address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
P.O. Box 57992	Los Angeles	CA	90057-0992
Pay-to address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
2131 West Third Street	Los Angeles	CA	90057-0992
Previous business address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
N/A			
Taxpayer Identification Number**			
91-2154438			

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by the Department of Health Care Services (DHCS), or, from the date provider is approved for continued enrollment. This agreement may be terminated for cause if the Provider is suspended/excluded from further participation in the Medi-Cal program unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal program. This agreement may be terminated for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 27(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program. During any period in which the provider is on provisional provider status or preferred provisional provider status, DHCS may terminate this agreement for any of the grounds stated in Welfare and Institutions Code Section 14043.27(c).

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED
OCT 21 2009

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

11. **Confidentiality of Beneficiary Information.** Provider agrees that all medical records of beneficiaries made or acquired by Provider shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law.

12. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

13. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

14. **Unannounced Visits By DHCS, CDPH, AG and Secretary.** Provider agrees that DHCS, CDPH, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Failure to permit inspection by DHCS, CDPH, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

15. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

16. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any other government entity. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse. Provider further agrees that it shall be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which shall include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation for fraud or abuse. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse.

17. **Provider Fraud or Abuse Convictions and/or Civil Fraud or Abuse Liability.** Provider certifies that it and its owners, officers, directors, employees, and agents, has not: (1) been convicted of any felony or misdemeanor involving fraud or abuse in any government program, within the last ten years; or (2) been convicted of any felony or misdemeanor involving the abuse of any patient; or (3) been convicted of any felony or misdemeanor substantially related to the qualifications, functions, or duties of a provider; or (4) entered into a settlement in lieu of conviction for fraud or abuse, within the last ten years; or, (5) been found liable for fraud or abuse in any civil proceeding, within the last ten years. Provider further agrees that DHCS shall not enroll Provider if within the last ten years, Provider has been convicted of any felony or any misdemeanor involving fraud or abuse in any government program, has entered into a settlement in lieu of conviction for fraud or abuse, or has been found liable for fraud or abuse in any civil proceeding.

a. The provider, persons with an ownership or control interest in the provider, or persons who are managing employees of the provider have been convicted of any felony, misdemeanor involving fraud or abuse in any government program related to neglect of clients in connection with the delivery of a health care item or service, or in connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse, or have been found liable for fraud or abuse in any civil proceeding, or have entered into a settlement in lieu of conviction for fraud or abuse in any government program within 10 years of the date of the application package.

b. There is a material discrepancy in the information provided to the department, or with the requirements to be enrolled, that is discovered after provisional provider status or preferred provisional provider status has been granted and that cannot be corrected because the discrepancy occurred in the past.

c. The provider has provided material information that was false or misleading at the time it was provided.

d. The provider failed to have an established place of business at the business address for which the application package was submitted at the time of any onsite inspection, announced or unannounced visit, or any additional inspection or review conducted pursuant to this article or a statute or regulation governing the Medi-Cal program, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods supplies, or merchandise are rendered or delivered at locations other than the business address and this practice of delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status of preferred provisional provider status was granted.

e. The provider meets the definition of a clinic under Section 1200 of the Health and Safety Code, but is not licensed as a clinic pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and fails to meet the requirements to qualify for at least one exemption pursuant to Section 1206 or 1206.1 of the Health and Safety Code.

f. The provider performs clinical laboratory tests or examinations, but it or its personnel do not meet CLIA, and the regulations adopted thereunder, and the state clinical laboratory law, do not possess valid CLIA certificates and clinical laboratory registrations or licenses pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code, or are not exempt from licensure as a clinical laboratory under Section 1241 of the Business and Professions Code.

g. The provider fails to possess either of the following:

(1) The appropriate licenses, permits, certificates, or other approvals needed to practice the profession or occupation, or provide the services, goods, supplies, or merchandise the provider identified in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted and for the location for which the application was submitted.

(2) The business or zoning permits or other approval necessary to operate a business at the location identified in its application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

h. The provider, or if the provider is a clinic, group, partnership, corporation, or other association, any officer, director, or shareholder with a 10 percent or greater interest in that organization, commits two or more violations of the federal or state statutes or regulation governing the Medi-Cal program, and the violations demonstrate a pattern or practice of fraud, abuse, or provision of unnecessary or substandard medical services.

i. The provider commits any violation of a federal or state statute or regulation governing the Medi-Cal program or of a statute or regulation governing the provider's profession or occupation and the violation represents a threat of immediate jeopardy or significant harm to any Medi-Cal beneficiary or to the public welfare.

j. The provider submits claims for payment that subject a provider to suspension under Section 14043.61.

k. The provider submits claims for payment for services, goods, supplies, or merchandise rendered at a location other than the location for which the provider number was issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status was granted.

(4) When necessary to protect the public welfare or the interests of the Medi-Cal program. Administrative appeal pursuant to Health and Safety Code, Section 1261(e) and Welfare and Institutions Code, Section 14043.65.

(5). Provider submits claims for payment under any provider number from an individual or entity that is suspended, excluded or otherwise ineligible. This includes a provider on the Suspended and Ineligible Provider List or any list published by the Office of the Inspector General or the Department of Health and Human Services. Appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.61).

28. **Provider Termination, Imposition of Federal Sanctions, and Appeal Rights for Long Term Care Facilities.** Provider agrees that it is subject to any federal sanctions authorized under the state plan including termination of this provider agreement in accordance with federal law. Provider further agrees that the termination of this provider agreement or imposition of other federal sanctions authorized under the state plan shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the termination or imposition of sanctions.

    a. **Skilled Nursing Facility and Intermediate Care Facility Appeal Procedures.** SNF and ICF Medi-Cal Providers shall have the appeal rights set forth in Article 1.6 of Chapter 3 of Division 3 of Title 22.

    b. **Intermediate Care Facilities-Mental Retardation Appeal Procedures.** Intermediate Care Facilities-Developmentally Disabled; Intermediate Care Facilities-Developmentally Disabled-Habilitative; Intermediate Care Facilities-Developmentally Disabled-Nursing shall have the appeal rights set forth in 42 CFR 431.153 and 431.154.

29. **Liability of Group Providers.** Provider agrees that, if it is a provider goup, the group, and each member of the group, are jointly and severally liable for any breach of this Agreement, and that action against any of the providers in the provider group may result in action against all of the members of the provider group.

30. **Legislative and Congressional Changes.** Provider agrees that this Agreement is subject to any future additional requirements, restrictions, limitations, or conditions enacted by the California Legislature or the United States Congress which may affect the provisions, terms, conditions, or funding of this Agreement in any manner.

31. **Provider Capacity.** Provider agrees that Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

provider

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

St. Vincent Medical Center, Inc.

1. Printed legal name of provider

Cathy Ficken

2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in item 1 above)

3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor

President/CEO

4. Title of person signing this declaration

5. Notary Public (Affix notary seal or stamp in the space below)

See Attached California ~~Acknowelegement~~ Acknowlegement

Executed at: _____ (City), _____ (State) on _____ (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. Contact Person's Information

☐ Check here if you are the same person identified in Item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last)	(first)	(middle)	(gender)
			☐ Male ☐ Female
Title/Position	CathyFicken@dochs.org Email address	213-484-7111 Telephone Number	

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a) The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles

On 15 Oct 2009 (Date) before me, Robert S. Yesko, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Cathy Fickes (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

ROBERT S. YESKO
Commission # 1742089
Notary Public - California
Los Angeles County
My Comm. Expires May 16, 2011

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Robert S. Yesko Notary Public
(Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Medi-Cal Provider Agreement

Document Date: 15 Oct 2009 Number of Pages: 2+9 Information + Typed Signature 9 pages

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: Cathy Fickes
☐ Individual
☒ Corporate Officer — Title(s): President/CEO
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:
Signer is Representing: St Vincent Medical Center, Los Angeles

RIGHT THUMBPRINT OF SIGNER — Top of thumb here

Signer's Name:
☐ Individual
☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:
Signer is Representing:

RIGHT THUMBPRINT OF SIGNER — Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

EXHIBIT 2

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY

55-5238

Date

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Legal name of applicant or provider (as listed with the IRS) St. Francis Medical Center	Business name (if different than legal name) ST. FRANCIS MEDICAL CENTER D/P SNF		
Provider number (NPI number) 1487697215(Acute); 1245227180(SNF)		Business Telephone Number (310) 900-8900	
Business address (number, street) 3630 E. Imperial Highway	City Lynwood	State CA	Nine-digit ZIP code 90262
Mailing address (number, street, P.O. Box number) 3630 E. Imperial Highway	City Lynwood	State CA	Nine-digit ZIP code 90262
Pay-to address (number, street, P.O. Box number) File #56850	City Los Angeles	State CA	Nine-digit ZIP code 90074
Previous business address (number, street, P.O. Box number) N/A	City N/A	State N/A	Nine-digit ZIP code N/A
Taxpayer Identification Number** 91-2154439			

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by DHCS, or, from the date provider is approved for continued enrollment. Provider may terminate this Agreement by providing DHCS with written notice of intent to terminate, which termination shall result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedure Act) from further participation in the Medi-Cal program, including deactivation of any provider agreement, unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal Program. DHCS may immediately terminate this Agreement for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 25(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program.

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED
AUG 26 2010

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors

10. **Confidentiality of Beneficiary Information.** Provider agrees that all documents, whether paper, electronic or in any media, that contain protected health information as defined under the Health Information Portability and Accountability Act or personal, confidential information of beneficiaries made or acquired by Provider, shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law. Provider agrees to enter into a business associate agreement with any billing agents to assure that they comply with these requirements.

11. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

12. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

13. **Unannounced Visits By DHCS, AG and Secretary.** Provider agrees that DHCS, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Pursuant to Welfare and Institutions Code Section 14043.7(b), such unannounced visits are authorized should the department have reason to believe that the provider will defraud or abuse the Medi-Cal program or lacks the organizational or administrative capacity to provide services under the program. Failure to permit inspection by DHCS, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

14. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

15. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any Federal, state or local law enforcement agency, including the Medicaid investigation units of DHCS and the Office of the Inspector General for the Federal Department of Health and Human Services. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse by any such entity. Provider further agrees that it may be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which may include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation as described in that section. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse, although Provider does not waive any timely and properly asserted rights it may have under the 5th Amendment privilege against self-incrimination.

'23. **Compliance With Requirements.** Provider and any billing agent agree that it shall comply with all of the requirements set forth in the Welfare and Institutions Code and its implementing regulations, and the Medi-Cal Provider Manuals, including applicable changes to the Medi-Cal Provider Manuals published by DHCS subsequent to the effective date of this Agreement. Providers and their billing agents agree to comply with Welfare and Institutions Code Section 14115 and California Code of Regulations, Title 22, Section 51008 and 51008.5. Providers agree to submit all claims within 60 days of the dates of service but no later than six months to receive full payment. Provider and its billing agent also agree to exhaust all administrative remedies with the fiscal intermediary prior to filing a writ of mandate pursuant to Welfare and Institutions Code Section 14104.5. In the event DHCS determines a reimbursement overpayment has been made to Provider or monies are otherwise owed pursuant to this Agreement, Provider agrees to promptly repay the amounts owed in accordance with applicable federal and California statutes and regulations, and rules and policies of DHCS. DHCS may recoup any overpayment from monies otherwise payable to Provider under this Agreement under any provider number of Provider.

24. **Deficit Reduction Act of 2005, Section 6032 Implementation.** To the extent applicable, as a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act (42 USC 1396a(a)(68)), set forth in that subsection and as the federal Secretary of Health and Human Services may specify.

25. **Provider Suspension; Appeal Rights; Reinstatement.** Provider agrees that it is to be subject to the following suspension actions. Provider further agrees that the suspension of Provider shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment, either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the suspension.

a. **Automatic Suspensions/Mandatory Exclusions.** The provider shall be automatically suspended under the following circumstances:

(1) Upon notice from the Secretary of the United States Department of Health and Human Services that Provider has been excluded from participation in the Medicare or Medicaid programs. No administrative appeal of a suspension on this ground shall be available to Provider. (Welfare and Institutions Code, Section 14123(b),(c)).

(2) If Provider has license(s), certificate(s), or other approval(s) to provide health care services, revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that license, certificate, or approval was pending. (Welfare and Institutions Code, Section 14043.6).

(3) If Provider is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Suspension following conviction is not subject to the proceedings under Welfare and Institutions Code Section 14123(c). However, the director may grant an informal hearing at the request of the provider to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension.

b. **Permissive Suspensions/Permissive Exclusions.** The provider may be suspended under the following circumstances:

(1) Provider violates any of the provisions of Chapter 7 of the Welfare and Institutions Code (commencing with Section 14000 except for Sections 14043-14044), or Chapter 8 (commencing with Section 14200) or any rule or regulations promulgated by DHCS pursuant to those provisions. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14123(a),(c)).

(2) Provider fails to comply with DHCS's request to examine or receive copies of the books and records pertaining to services rendered to Medi-Cal beneficiaries. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14124.2).

(3) Provider participating in the Medi-Cal dental program provides services, goods, supplies, or merchandise that are below or less than the standard of acceptable quality, as established by the California Dental Association Guidelines for the Assessment of Clinical Quality and Professional Performance, Copyright 1995, Third Edition, as periodically amended. (Welfare and Institutions Code, Section 14123(f)).

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

1. Printed legal name of provider
   St. Francis Medical Center
2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in item 1 above)
   Gerald T. Kozai, Pharm D.
3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor
   [signature]
4. Title of person signing this declaration
   President and C.E.O.
5. Notary Public (Affix notary seal or stamp in the space below)

State of California, County of Los Angeles
Subscribed and sworn to (or affirmed) before me on this 16th day of Aug, 2010, by Gerald T Kozai proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
[signature] Signature of Notary

LARCENIA L. FREEMAN
Commission # 1801587
Notary Public - California
Los Angeles County
My Comm. Expires Jul 10, 2012

Executed at: Lynwood (City), California (State) on August 16, 2010 (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. Contact Person's Information
   ☐ Check here if you are the same person identified in item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last)	(first)	(middle)	(gender)
Thomas, Ta-Tanisha			☐ Male ☒ Female

Title/Position	Email address	Telephone Number
Director of ManagedCare and Provider Relations	tankshathomas@dochs.org	(310) 900-7323

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a). The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

EXHIBIT 3

PFD PROVIDER MASTER FILE INPUT DOCUMENT

PROV NAME FOR SCAN:SETON MEDICAL CENTER **NO. OF PGS:** 12

DOC# 431776 **REVIEW DUE DATE:** 04/20/2011

RISK: Low **PAGE#** 1 of 1

Document Review and Approve Signatures								
Analyst Gerard Smith	Date 11/10/10	Reviewer	Date	Return	Supervisor K	Date 11/15/10	Return	
Comments:								

PMF Transaction Signatures						
Technician	Date 11-16-2010	Return	Status change update and review signature	Date	Return	
Reviewer AS 11/17/10	Date	Return	Supervisor (optional)	Date	Return	
Comments:						

ACTION REQUESTED: UPDATE A PROV **DOC TYPE:** OTHER

PROV NUM: 1154428688 **OWNR NUM:** **LOC NUM:** **PROV TYPE:** 015

PSS059 OWNER SCREEN

LEGAL NAME: SOCIAL SECURITY NO:

EFF. BEGIN DATE: EFF. END DATE: LAST FISCAL MONTH: WARRANT:

FED EMP ID NO/ TIN:

TIN DATE: IRS UPDATE TYPE:

FACILITY /CLINIC BASED:

MEDICARE NO:

SANCTIONS:

PROVIDER CROSS REFERENCE
N/A

PSS070 LOCATION SCREEN

BUSINESS NAME: TELEPHONE NO: 650-991-6400

	PAY-TO ADDRESS	SERVICE ADDRESS	MAIL TO ADDRESS
ATN:			
LN 1:	1900 SULLIVAN AVE		1900 SULLIVAN AVE
LN 2:			
CTY:	DALY CITY		DALY CITY
STATE:	CA	STATE:	CA
ZIP:	940154132	ZIP:	940154132

OUT OF STATE:

PSS055 PROVIDER DETAIL SCREEN

APP DATE: PROV TYPE: PRACTICE: STAT. CODE:

STAT. EFF DATE: REJT RSN:

CATEGORIES OF SERVICE (CATEGORY, BEGIN DATE, ENDDATE):

LIC. NO: LIC. EFF DT: CLIA NO:

CHDP PROV NO:

SPEC PROC TYP: PROV ENR: NA PROV ENR DT: RE ENR IND:

PSS054

LAB STAT: LAB EFF DT:

PF3 PSS124 TAXONOMY CODES

INPUT DOC - (Rev. 02/26/2009)

State of California—Health and Human Services Agency

Department of Health Care Services

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY

05-0289

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date

Legal name of applicant or provider (as listed with the IRS)	Business name (if different than legal name)		
SETON MEDICAL CENTER	SAME		
Provider number (NPI number)		Business Telephone Number	
1154428688		(650) 991-6400	
Business address (number, street)	City	State	Nine-digit ZIP code
1900 SULLIVAN AVE.	DALY CITY	CA	94015-4132
Mailing address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
1900 SULLIVAN AVE.	DALY CITY	CA	94015-4132
Pay-to address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
1900 SULLIVAN AVE.	DALY CITY	CA	94015-4132
Previous business address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code

Taxpayer Identification Number**
91215444 1

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by DHCS, or, from the date provider is approved for continued enrollment. Provider may terminate this Agreement by providing DHCS with written notice of intent to terminate, which termination shall result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedure Act) from further participation in the Medi-Cal program, including deactivation of any provider agreement, unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal Program. DHCS may immediately terminate this Agreement for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 25(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program.

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED

OCT 12 2010

10/7/10

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

10. **Confidentiality of Beneficiary Information.** Provider agrees that all documents, whether paper, electronic or in any media, that contain protected health information as defined under the Health Information Portability and Accountability Act or personal, confidential information of beneficiaries made or acquired by Provider, shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law. Provider agrees to enter into a business associate agreement with any billing agents to assure that they comply with these requirements.

11. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

12. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

13. **Unannounced Visits By DHCS, AG and Secretary.** Provider agrees that DHCS, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Pursuant to Welfare and Institutions Code Section 14043.7(b), such unannounced visits are authorized should the department have reason to believe that the provider will defraud or abuse the Medi-Cal program or lacks the organizational or administrative capacity to provide services under the program. Failure to permit inspection by DHCS, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

14. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

15. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any Federal, state or local law enforcement agency, including the Medicaid investigation units of DHCS and the Office of the Inspector General for the Federal Department of Health and Human Services. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse by any such entity. Provider further agrees that it may be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which may include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation as described in that section. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse, although Provider does not waive any timely and properly asserted rights it may have under the 5th Amendment privilege against self-incrimination.

23. **Compliance With Requirements.** Provider and any billing agent agree that it shall comply with all of the requirements set forth in the Welfare and Institutions Code and its implementing regulations, and the Medi-Cal Provider Manuals, including applicable changes to the Medi-Cal Provider Manuals published by DHCS subsequent to the effective date of this Agreement. Providers and their billing agents agree to comply with Welfare and Institutions Code Section 14115 and California Code of Regulations, Title 22, Section 51008 and 51008.5. Providers agree to submit all claims within 60 days of the dates of service but no later than six months to receive full payment. Provider and its billing agent also agree to exhaust all administrative remedies with the fiscal intermediary prior to filing a writ of mandate pursuant to Welfare and Institutions Code Section 14104.5. In the event DHCS determines a reimbursement overpayment has been made to Provider or monies are otherwise owed pursuant to this Agreement, Provider agrees to promptly repay the amounts owed in accordance with applicable federal and California statutes and regulations, and rules and policies of DHCS. DHCS may recoup any overpayment from monies otherwise payable to Provider under this Agreement under any provider number of Provider.

24. **Deficit Reduction Act of 2005, Section 6032 Implementation.** To the extent applicable, as a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act (42 USC 1396a(a)(68)), set forth in that subsection and as the federal Secretary of Health and Human Services may specify.

25. **Provider Suspension; Appeal Rights; Reinstatement.** Provider agrees that it is to be subject to the following suspension actions. Provider further agrees that the suspension of Provider shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment, either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the suspension.

a. **Automatic Suspensions/Mandatory Exclusions.** The provider shall be automatically suspended under the following circumstances:

(1) Upon notice from the Secretary of the United States Department of Health and Human Services that Provider has been excluded from participation in the Medicare or Medicaid programs. No administrative appeal of a suspension on this ground shall be available to Provider. (Welfare and Institutions Code, Section 14123(b),(c)).

(2) If Provider has license(s), certificate(s), or other approval(s) to provide health care services, revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that license, certificate, or approval was pending. (Welfare and Institutions Code, Section 14043.6).

(3) If Provider is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Suspension following conviction is not subject to the proceedings under Welfare and Institutions Code Section 14123(c). However, the director may grant an informal hearing at the request of the provider to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension.

b. **Permissive Suspensions/Permissive Exclusions.** The provider may be suspended under the following circumstances:

(1) Provider violates any of the provisions of Chapter 7 of the Welfare and Institutions Code (commencing with Section 14000 except for Sections 14043-14044), or Chapter 8 (commencing with Section 14200) or any rule or regulations promulgated by DHCS pursuant to those provisions. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14123(a),(c)).

(2) Provider fails to comply with DHCS's request to examine or receive copies of the books and records pertaining to services rendered to Medi-Cal beneficiaries. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14124.2).

(3) Provider participating in the Medi-Cal dental program provides services, goods, supplies, or merchandise that are below or less than the standard of acceptable quality, as established by the California Dental Association Guidelines for the Assessment of Clinical Quality and Professional Performance, Copyright 1995, Third Edition, as periodically amended. (Welfare and Institutions Code, Section 14123(f)).

30. **Provider Capacity.** Provider agrees that Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

31. **Indemnification.** Provider agrees to indemnify, defend, and save harmless the State of California, its officers, agents, and employees, from any and all claims and losses accruing or resulting to any and all persons, firms, or corporations furnishing or supplying services, materials, or supplies in connection with Provider's performance of this Agreement, and from any and all claims and losses accruing or resulting to any Medi-Cal beneficiary, or to any other person, firm, or corporation who may be injured or damaged by Provider in the performance of this Agreement.

32. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

33. **Venue.** Venue for all actions, including federal actions, concerning this Agreement, lies in Sacramento County, California, or in any other county in which the California Department of Justice maintains an office.

34. **Titles.** The titles of the provisions of this Agreement are for convenience and reference only and are not to be considered in interpreting this Agreement.

35. **Severability.** If one or more of the provisions of this Agreement shall be invalid, illegal, void, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. Either party having knowledge of such a provision shall promptly inform the other of the presumed non-applicability of such provision. Should the non-applicable provision go to the heart of this Agreement, the Agreement shall be terminated in a manner commensurate with the interests of both parties.

36. **Assignability.** Provider agrees that it has no property right in or to its status as a Provider in the Medi-Cal program or in or to the provider number(s) assigned to it, and that Provider may not assign its provider number for use as a Medi-Cal provider, or any rights and obligations it has under this Agreement except to the extent purchasing owner is joining this provider agreement with successor joint and several liability.

37. **Waiver.** Any action or inaction by DHCS or any failure of DHCS on any occasion, to enforce any right or provision of this Agreement, shall not be interpreted to be a waiver by DHCS of its rights hereunder and shall not prevent DHCS from enforcing such provision or right on any future occasion. The rights and remedies of DHCS herein are cumulative and are in addition to any other rights or remedies that DHCS may have at law or in equity.

38. **Complete Integration.** This Agreement, including any attachments or documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of this Agreement, unless such additional agreement(s) is between DHCS and the Provider, expressly references or incorporates all or part of this Agreement, and is signed by the Provider.

39. **Amendment.** Any alteration or modification by the applicant or Provider of this Medi-Cal Provider Agreement (DHCS Form 9098) or to any of the terms in its exhibits or attachments, shall automatically and immediately void this agreement upon submission of the signed agreement to the State, unless such agreement is also signed by the State.

40. **Provider Attestation.** Provider agrees that all information it submits on the application form for enrollment, this Agreement, and all attachments or changes to either, is true, accurate, and complete to the best of Provider's knowledge and belief. Provider further agrees to sign the application form for enrollment, this Agreement, and all attachments or changes to either, under penalty of perjury under the laws of the State of California.

EXHIBIT 4

RED PROVIDER MASTER FILE INPUT DOCUMENT

PROV NAME FOR SCAN:SAINT VINCENT DIALYSIS CENTER NO. OF PGS:

DOC# 458698 REVIEW DUE DATE:

RISK:Low PAGE# 1 of 1

Document Review and Approve Signatures								
Analyst	Date	Reviewer	Date	Return	Supervisor	Date	Return
Comments:							

PMF Transaction Signatures						
Technician	Date	Return	Status change update and review signature		Date	Return
Reviewer	Date	Return	Supervisor (optional)		Date	Return
Comments:						

ACTION REQUESTED:UPDATE A PROV DOC TYPE: OTHER

PROV NUM:1992700314 OWNR NUM:1 LOC NUM:1 PROV TYPE:042

PSS059 OWNER SCREEN

LEGAL NAME:SAINT VINCENT DIALYSIS SOCIAL SECURITY NO: - -

EFF. BEGIN DATE: EFF. END DATE: LAST FISCAL MONTH: WARRANT:

FED EMP ID NO/ TIN:

TIN DATE: IRS UPDATE TYPE:I

FACILITY /CLINIC BASED:

MEDICARE NO:

SANCTIONS:

PROVIDER CROSS REFERENCE
N/A

PSS070 LOCATION SCREEN

BUSINESS NAME: TELEPHONE NO:

	PAY-TO ADDRESS	SERVICE ADDRESS	MAIL TO ADDRESS
ATN:	CENTER INC	CENTER INC	CENTER INC
LN 1:			
LN 2:		STE 220	
CTY:			
STATE:	ZIP:	STATE: ZIP:900572388	STATE: ZIP:

OUT OF STATE:

PSS055 PROVIDER DETAIL SCREEN

APP DATE: PROV TYPE: PRACTICE: STAT. CODE:

STAT. EFF DATE: REJT RSN:

CATEGORIES OF SERVICE (CATEGORY, BEGIN DATE, ENDDATE):

LIC. NO: LIC. EFF DT: CLIA NO:

CHDP PROV NO:

SPEC PROC TYP: PROV ENR: 5 PROV ENR DT: RE ENR IND:

PSS054

LAB STAT: LAB EFF DT:

PF3 PSS124 TAXONOMY CODES

INPUT DOC - (Rev. 02/26/2009)

State of California—Health and Human Services Agency — Department of Health Care Services

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY
052582

Do not use staples on this form or on any attachments.
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date: 3/7/2011

Legal name of applicant or provider (as listed with the IRS)	Business name (if different than legal name)		
SAINT VINCENT DIALYSIS CENTER, INC			
Provider number (NPI number): 1992700314 CDC 700305		Business Telephone Number: (213) 484-7425	
Business address (number, street): 201 SOUTH ALVARADO STREET, SUITE 220	City: LOS ANGELES	State: CA	Nine-digit ZIP code: 90057-3413
Mailing address (number, street, P.O. Box number): S.A.A.	City	State	Nine-digit ZIP code
Pay-to address (number, street, P.O. Box number): S.A.A.	City	State	Nine-digit ZIP code
Previous business address (number, street, P.O. Box number): N/A	City	State	Nine-digit ZIP code
Taxpayer Identification Number**: 95-3749293			

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by DHCS, or, from the date provider is approved for continued enrollment. Provider may terminate this Agreement by providing DHCS with written notice of intent to terminate, which termination shall result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedure Act) from further participation in the Medi-Cal program, including deactivation of any provider agreement, unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal Program. DHCS may immediately terminate this Agreement for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 25(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program.

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

RECEIVED
MAR 28 2011

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

458698

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

1. Printed legal name of provider

SAINT VINCENT DIALYSIS CENTER, INC.

2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in item 1 above)

JAMES T. ROE, M.D.

3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor

X James T. Roe MD

4. Title of person signing this declaration

MEDICAL DIRECTOR

5. Notary Public (Affix notary seal or stamp in the space below)

See attached acknowledgement 3/15/11 thr

Executed at: LOS ANGELES (City), CA (State) on / / (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. **Contact Person's Information**

☑ Check here if you are the same person identified in Item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last)	(first)	(middle)	(gender)
			☐ Male ☐ Female

Title/Position	Email address	Telephone Number
	gracieperez@dochs.org	213 484-7295

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a). The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of LOS ANGELES

On MAR 15, 2011 (Date) before me, VENUS NEVERSON, NOTARY PUBLIC (Here Insert Name and Title of the Officer)

personally appeared JAMES T. ROE, M.D (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Venus Neverson (Signature of Notary Public)

VENUS NEVERSON
Commission # 1742270
Notary Public - California
Los Angeles County
My Comm. Expires May 21, 2011

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Medi-Cal Provider Agreement

Document Date: 3/7/11 Number of Pages: 2

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: JAMES T. ROE, M.D	Signer's Name:
☒ Individual	☐ Individual
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact	☐ Attorney-in-Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☒ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing:	Signer Is Representing:
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

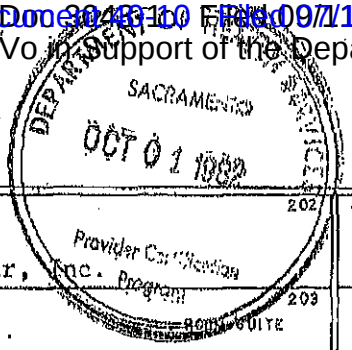
VN 3/15/10

© 2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

VKN 3/15/10 MCPA

STATE OF CALIFORNIA – HEALTH AND WELFARE AG — DEPARTMENT OF HEALTH SERVICES

MEDI-CAL PROVIDER DATA FORM



1. FACILITY NAME 202	4. FEDERAL EMPLOYER'S ID NUMBER 212	5. FISCAL YEAR END MONTH 218
St. Vincent Dialysis Center, Inc.	95-3749293	June 30, 1983

2. FACILITY ADDRESS 203
NUMBER STREET ROOM/SUITE
201 South Alvarado Street Suite 220
CITY COUNTY STATE ZIP CODE
Los Angeles, California 90057

3. PAY TO ADDRESS (IF DIFFERENT) 204
NUMBER STREET ROOM/SUITE
Same
CITY COUNTY STATE ZIP CODE

6A. TYPE OF ORGANIZATION (CHECK ONE) 210

- ☐ State Government
- ☐ County Government
- ☐ City Government
- ☒ Nongovernmental Nonprofit
- ☐ Nongovernmental for Profit
- ☐ Other (specify)

6B. TYPE OF OWNERSHIP (CHECK ONE) 210

- ☐ Individual
- ☒ Corporation
- ☐ Partnership
- ☐ Other (specify)

7. List facility owner(s). List owner(s) professional license numbers, if applicable. (For corporations, list corporate name only.) *(Attach a separate sheet of paper if more space is needed).* 266/250

NAME	PROFESSIONAL STATE LICENSE NUMBER	NAME	PROFESSIONAL STATE LICENSE NUMBER
St. Vincent Dialysis Center, Inc.			

8. In addition to this facility, please indicate other facilities or practices that the owner(s) may have. 270
(Attach a separate sheet of paper if more space is needed).

ADDRESS (Actual Facility or Practice Location)	NAME USED FOR BILLING FROM THIS LOCATION	PROVIDER NUMBER ASSIGNED TO THIS LOCATION
NONE		

9. List previous Medi-Cal provider numbers that the owner(s) have been issued. 271
NONE

10. Is this a teaching facility for residents and/or interns who are salaried by a hospital? ☐ Yes ☒ No 247

I certify that the above information is true, accurate and complete to the best of my knowledge.

11. APPLICANT'S TYPED OR PRINTED NAME	12. APPLICANT'S TYPED OR PRINTED TITLE
Sina M. Pierret	Executive Director
13. APPLICANT'S SIGNATURE	**14. DATE**
▶ Sina M. Pierret	September 29, 1982

MC 003 (11/79)

EXHIBIT 5

MEDI-CAL PROVIDER AGREEMENT
(Institutional Provider)
(To Accompany Applications for Enrollment)*

FOR STATE USE ONLY

Do not use staples *on this form or on any attachments.*
Type or print clearly in ink. If you must make corrections, please line through, date, and initial in ink.
Do not leave any questions, lines, etc. blank. Enter N/A if not applicable to you.

Date

Legal name of applicant or provider (as listed with the IRS)	Business name (If different than legal name)		
Provider number (NPI number)		Business Telephone Number ( )	
Business address (number, street)	City	State	Nine-digit ZIP code
Mailing address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
Pay-to address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
Previous business address (number, street, P.O. Box number)	City	State	Nine-digit ZIP code
Taxpayer Identification Number**			

EXECUTION OF THIS PROVIDER AGREEMENT BETWEEN AN APPLICANT OR PROVIDER (HEREINAFTER JOINTLY REFERRED TO AS "PROVIDER") AND THE DEPARTMENT OF HEALTH CARE SERVICES (HEREINAFTER "DHCS"), IS MANDATORY FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM PURSUANT TO 42 UNITED STATES CODE, SECTION 1396a(a)(27), TITLE 42, CODE OF FEDERAL REGULATIONS, SECTION 431.107, WELFARE AND INSTITUTIONS CODE, SECTION 14043.2, AND TITLE 22, CALIFORNIA CODE OF REGULATIONS, SECTION 51000.30(a)(2).

AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE:

1. **Term and Termination.** This Agreement will be effective from the date applicant is enrolled as a provider by the Department of Health Care Services (DHCS), or, from the date provider is approved for continued enrollment. This agreement may be terminated for cause if the Provider is suspended/excluded from further participation in the Medi-Cal program unless and until such time as Provider is re-enrolled by DHCS in the Medi-Cal program. This agreement may be terminated for cause if Provider is suspended/excluded for any of the reasons set forth in Paragraph 27(a) below, which termination will result in Provider's immediate disenrollment and exclusion (without formal hearing under the Administrative Procedures Act) from further participation in the Medi-Cal program. During any period in which the provider is on provisional provider status or preferred provisional provider status, DHCS may terminate this agreement for any of the grounds stated in Welfare and Institutions Code Section 14043.27(c).

2. **Compliance With Laws and Regulations.** Provider agrees to comply with all applicable provisions of Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 14200), and any applicable rules or regulations promulgated by DHCS pursuant to these Chapters. Provider further agrees that if it violates any of the provisions of Chapters 7 and 8 of the Welfare and Institutions Code, or any other regulations promulgated by DHCS pursuant to these Chapters, it may be subject to all sanctions or other remedies available to DHCS. Provider further agrees to comply with all federal laws and regulations governing and regulating Medicaid providers.

* Every applicant and provider must execute this Provider Agreement.
** The taxpayer identification number may be a Taxpayer Identification Number (TIN) or a social security number for sole proprietors.

3. National Provider Identifier (NPI). Provider agrees to be solely liable for any claims billed under its NPI unless that NPI is appropriately registered within the Centers for Medicare and Medicaid Services (CMS) and is in compliance with all NPI requirements established by CMS as of the date the claim is submitted. Provider agrees that submission of an NPI to DHCS as part of an application to use that NPI to obtain payment constitutes an implied representation that the NPI submitted is appropriately registered and in compliance with all CMS requirements at the time of submission. Provider also agrees that any subsequent defect in registration or compliance of the NPI constitutes an "addition or change in the information previously submitted" which must be reported to DHCS under the requirements of California Code of Regulations, Title 22, Section 51000.40.

4. **Forbidden Conduct.** Provider agrees that it shall not engage in conduct inimical to the public health, morals, welfare and safety of any Medi-Cal beneficiary, or the fiscal integrity of the Medi-Cal program.

5. **Nondiscrimination.** Provider agrees that it shall not exclude or deny aid, care, service or other benefits available under Medi-Cal or in any other way discriminate against a person because of that person's race, color, ancestry, marital status, national origin, gender, age, economic status, physical or mental disability, political or religious affiliation or beliefs in accordance with California and federal laws. Provider further agrees that it shall provide aid, care, service, or other benefits available under Medi-Cal to Medi-Cal beneficiaries in the same manner, by the same methods, and at the same scope, level, and quality as provided to the general public.

6. **Scope of Health and Medical Care.** Provider agrees that the health care services it provides may include diagnostic, preventive, corrective, and curative services, goods, supplies, and merchandise essential thereto, provided by qualified personnel for conditions that cause suffering, endanger life, result in illness or infirmity, interfere with capacity for normal activity, including employment, or for conditions which may develop into some significant handicap or disability. Provider further agrees such health care services may be subject to prior authorization to determine medical necessity.

7. **Licensing.** Provider agrees to possess at the time this Agreement becomes effective, and to maintain in good standing throughout the term of this Agreement, valid and unexpired license(s), certificate(s), or other approval(s) to provide health care services, which is appropriate to the services, goods, supplies, and merchandise being provided, if required by the state or locality in which Provider is located, or by the Federal Government. Provider further agrees it shall be automatically suspended as a provider in the Medi-Cal program pursuant to Welfare and Institutions Code, Section 14043.6, if Provider has license(s), certificate(s), or other approval(s) to provide health care services, which are revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that/those license(s), certificate(s), or approval(s) was pending. Such suspension shall be effective on the date that Provider's license, certificate, or approval was revoked, suspended, lost, or surrendered. Provider further agrees to notify DHCS within ten business days of learning that any restriction has been placed on, or of a suspension of Provider's license, certificate, or other approval to provide health care. Provider further agrees to provide DHCS complete information related to any restriction to, or revocation or loss of, Provider's license, certificate, or other approval to provide health care services.

8. **Insurance.** Provider agrees to possess at the time this Agreement becomes effective, and to maintain in good standing throughout the term of this Agreement, liability insurance for the business address and, if a licensed practitioner, professional liability (malpractice) insurance coverage from an authorized insurer pursuant to Section 700 of the Insurance Code.

9. **Record Keeping and Retention.** Provider agrees to make, keep and maintain in a systematic and orderly manner, and have readily retrievable, such records as are necessary to fully disclose the type and extent of all services, goods, supplies, and merchandise provided to Medi-Cal beneficiaries, including, but not limited to, the records described in Section 51476 of Title 22, California Code of Regulations, and the records described in Section 431.107 of Title 42 of the Code of Federal Regulations. Provider further agrees that such records shall be made at or near the time at which the services, goods, supplies, and merchandise are delivered or rendered, and that such records shall be retained by Provider in the form in which they are regularly kept for a period of three years from the date the goods, supplies, or merchandise were delivered or the services rendered.

10. **DHCS, CDPH, AG and Secretary Access to Records; Copies of Records.** Provider agrees to make available, during regular business hours, all pertinent financial records, all records of the requisite insurance coverage, and all records concerning the provision of health care services to Medi-Cal beneficiaries to any duly authorized representative of DHCS, CDPH, the California Attorney General's Medi-Cal Fraud Unit ("AG"), and the Secretary of the United States Centers for Medicare and Medicaid Services (Secretary). Provider further agrees to provide, if requested by any of the above, copies of the records and documentation, and that failure to comply with any request to examine or receive copies of such records shall be grounds for immediate suspension of Provider from participation in the Medi-Cal program. Provider will be reimbursed for reasonable copy costs as determined by DHCS, CDPH, AG or Secretary.

11. **Confidentiality of Beneficiary Information.** Provider agrees that all medical records of beneficiaries made or acquired by Provider shall be confidential and shall not be released without the written consent of the beneficiary or his/her personal representative, or as otherwise authorized by law.

12. **Disclosure of Information to DHCS.** Provider agrees to disclose all information as required in Federal Medicaid laws and regulations and any other information required by DHCS, and to respond to all requests from DHCS for information. Provider further agrees that the failure of Provider to disclose the required information, or the disclosure of false information shall, prior to any hearing, result in the denial of the application for enrollment or shall be grounds for termination of enrollment status or suspension from the Medi-Cal program, which shall include deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program. Provider further agrees that all bills or claims for payment to DHCS by Provider shall not be due and owing to Provider for any period(s) for which information was not reported or was reported falsely to DHCS. Provider further agrees to reimburse those Medi-Cal funds received during any period for which information was not reported, or reported falsely, to DHCS.

13. **Background Check.** Provider agrees that DHCS may conduct a background check on Provider for the purpose of verifying the accuracy of the information provided in the application and in order to prevent fraud or abuse. The background check may include, but not be limited to, the following: (1) on-site inspection prior to enrollment; (2) review of medical and business records; and, (3) data searches.

14. **Unannounced Visits By DHCS, CDPH, AG and Secretary.** Provider agrees that DHCS, CDPH, AG and/or Secretary may make unannounced visits to Provider, at any of Provider's business locations, before, during or after enrollment, for the purpose of determining whether enrollment, continued enrollment, or certification is warranted, to investigate and prosecute fraud against the Medi-Cal program, to investigate complaints of abuse and neglect of patients in health care facilities receiving payment under the Medi-Cal program, and/or as necessary for the administration of the Medi-Cal program and/or the fulfillment of the AG's powers and duties under Government Code Section 12528. Premises subject to inspection include billing agents, as defined in Welfare and Institutions Code Section 14040.1. Failure to permit inspection by DHCS, CDPH, AG or Secretary or any agent, investigator or auditor thereof, shall be grounds for immediate suspension of provider from participation in the Medi-Cal program.

15. **Provider Fraud and Abuse.** Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicare program, the Medi-Cal program, another state's Medicaid program, or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state; (2) practices that are inconsistent with sound medical practices and result in reimbursement by the Medi-Cal program or other health care programs operated, or financed in whole or in part, by the Federal Government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

16. **Investigations of Provider for Fraud or Abuse.** Provider certifies that, at the time this Agreement was signed, it was not under investigation for fraud or abuse pursuant to Subpart A (commencing with Section 455.12) of Part 455 of Title 42 of the Code of Federal Regulations or under investigation for fraud or abuse by any other government entity. Provider further agrees to notify DHCS within ten business days of learning that it is under investigation for fraud or abuse. Provider further agrees that it shall be subject to temporary suspension pursuant to Welfare and Institutions Code, Section 14043.36(a), which shall include temporary deactivation of all provider numbers used by Provider to obtain reimbursement from the Medi-Cal program, if it is discovered that Provider is under investigation for fraud or abuse. Provider further agrees to cooperate with and assist DHCS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse.

17. **Provider Fraud or Abuse Convictions and/or Civil Fraud or Abuse Liability.** Provider certifies that it and its owners, officers, directors, employees, and agents, has not: (1) been convicted of any felony or misdemeanor involving fraud or abuse in any government program, within the last ten years; or (2) been convicted of any felony or misdemeanor involving the abuse of any patient; or (3) been convicted of any felony or misdemeanor substantially related to the qualifications, functions, or duties of a provider; or (4) entered into a settlement in lieu of conviction for fraud or abuse, within the last ten years; or, (5) been found liable for fraud or abuse in any civil proceeding, within the last ten years. Provider further agrees that DHCS shall not enroll Provider if within the last ten years, Provider has been convicted of any felony or any misdemeanor involving fraud or abuse in any government program, has entered into a settlement in lieu of conviction for fraud or abuse, or has been found liable for fraud or abuse in any civil proceeding.

18. **Changes to Provider Information.** Provider agrees to keep its application for enrollment in the Medi-Cal program current by informing the California Department of Public Health (CDPH), District Office, in writing on a form or forms to be specified by DHCS, within 35 days of any changes to the information contained in its application for enrollment, its disclosure statement, this Agreement, and/or any attachments to these documents.

19. **Prohibition of Rebate, Refund, or Discount.** Provider agrees that it shall not offer, give, furnish, or deliver any rebate, refund, commission preference, patronage dividend, discount, or any other gratuitous consideration, in connection with the rendering of health care services to any Medi-Cal beneficiary. Provider further agrees that it shall not solicit, request, accept, or receive, any rebate, refund, commission preference, patronage dividend, discount, or any other gratuitous consideration, in connection with the rendering of health care services to any Medi-Cal beneficiary. Provider further agrees that it will not take any other action or receive any other benefit prohibited by state or federal law.

20. **Payment From Other Health Coverage Prerequisite to Claim Submission.** Provider agrees that it shall first seek to obtain payment for services provided to Medi-Cal beneficiaries from any private or public health insurance coverage to which the beneficiary is entitled, where Provider is aware of this coverage and to the extent the coverage extends to these services, prior to submitting a claim to DHCS for the payment of any unpaid balance for these services. In the event that a claim submitted to a private or public health insurer has not been paid within 90 days of billing by Provider, Provider may submit a claim to DHCS.

21. **Beneficiary Billing.** Provider agrees that it shall not submit claims to or demand or otherwise collect reimbursement from a Medi-Cal beneficiary, or from other persons on behalf of the beneficiary, for any service included in the Medi-Cal program's scope of benefits in addition to a claim submitted to the Medi-Cal program for that service, except to: (1) collect payments due under a contractual or legal entitlement pursuant to Welfare and Institutions Code, Section 14000(b); (2) bill a long-term care patient for the amount of his/her liability; and, (3) collect a co-payment pursuant to Welfare and Institutions Code, Sections 14134 and 14134.1. Provider further agrees that, in the event that a beneficiary willfully refuses to provide current other health care coverage billing information as described in Section 50763(a)(5) of Title 22, California Code of Regulations, Provider may, upon giving the beneficiary written notice of intent, bill the beneficiary as a private pay patient.

22. **Payment From Medi-Cal Program Shall Constitute Full Payment.** Provider agrees that payment received from DHCS in accordance with Medi-Cal fee structures shall constitute payment in full, except that Provider, after making a full refund to DHCS of any Medi-Cal payments received for services, goods, supplies, or merchandise, may recover all of Provider's fees to the extent that any other contractual entitlement, including, but not limited to, a private group or indemnification insurance program, is obligated to pay the charges for the services, goods, supplies, or merchandise provided to the beneficiary.

23. **Return of Payment for Services Otherwise Covered by the Medi-Cal Program.** Provider agrees that any beneficiary who has paid Provider for health care services, goods, supplies, or merchandise otherwise covered by the Medi-Cal program received by the beneficiary shall be entitled to a prompt return from Provider of any part of the payment which meets any of the following: (1) was rendered during any period prior to the receipt of the beneficiary's Medi-Cal card, for which the card authorizes payment under Welfare and Institutions Code, Sections 14018 or 14019; (2) was reimbursed to Provider by the Medi-Cal program, following audits and appeals to which Provider is entitled; (3) is not payable by a third party under contractual or other legal entitlement; (4) was not used by the beneficiary to satisfy his/her paid or obligated liability for health care services, goods, supplies, or merchandise, or to establish eligibility.

24. **Compliance With Billing and Claims Requirements.** Provider agrees that it shall comply with all of the billing and claims requirements set forth in the Welfare and Institutions Code and its implementing regulations, and the provider manual.

25. **Deficit Reduction Act of 2005, Section 6032 Implementation.** As a condition of payment for services, goods, supplies and merchandise provided to beneficiaries in the Medical Assistance Program ("Medi-Cal"), providers must comply with the False Claims Act employee training and policy requirements in 1902(a) of the Social Security Act (42 USC 1396a(a)(68)), set forth in that subsection and as the federal Secretary of Health and Human Services may specify.

26. **Termination of Provisional Provider or Preferred Provisional Provider Status.** Provider agrees that, while it is on provisional provider status or preferred provisional provider status, the provider will be subject to immediate termination of its provisional provider status or preferred provisional provider status and disenrollment from the Medi-Cal program in the following circumstances:

a. The provider, persons with an ownership or control interest in the provider, or persons who are directors, officers, or managing employees of the provider have been convicted of any felony, or convicted of any misdemeanor involving fraud or abuse in any government program, related to neglect or abuse of a patient in connection with the delivery of a health care item or service, or in connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse, or have been found liable for fraud or abuse in any civil proceeding, or have entered into a settlement in lieu of conviction for fraud or abuse in any government program within 10 years of the date of the application package.

b. There is a material discrepancy in the information provided to the department, or with the requirements to be enrolled, that is discovered after provisional provider status or preferred provisional provider status has been granted and that cannot be corrected because the discrepancy occurred in the past.

c. The provider has provided material information that was false or misleading at the time it was provided.

d. The provider failed to have an established place of business at the business address for which the application package was submitted at the time of any onsite inspection, announced or unannounced visit, or any additional inspection or review conducted pursuant to this article or a statute or regulation governing the Medi-Cal program, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods supplies, or merchandise are rendered or delivered at locations other than the business address and this practice of delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status of preferred provisional provider status was granted.

e. The provider meets the definition of a clinic under Section 1200 of the Health and Safety Code, but is not licensed as a clinic pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and fails to meet the requirements to qualify for at least one exemption pursuant to Section 1206 or 1206.1 of the Health and Safety Code.

f. The provider performs clinical laboratory tests or examinations, but it or its personnel do not meet CLIA, and the regulations adopted thereunder, and the state clinical laboratory law, do not possess valid CLIA certificates and clinical laboratory registrations or licenses pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code, or are not exempt from licensure as a clinical laboratory under Section 1241 of the Business and Professions Code.

g. The provider fails to possess either of the following:

(1) The appropriate licenses, permits, certificates, or other approvals needed to practice the profession or occupation, or provide the services, goods, supplies, or merchandise the provider identified in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted and for the location for which the application was submitted.

(2) The business or zoning permits or other approval necessary to operate a business at the location identified in its application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

h. The provider, or if the provider is a clinic, group, partnership, corporation, or other association, any officer, director, or shareholder with a 10 percent or greater interest in that organization, commits two or more violations of the federal or state statues or regulation governing the Medi-Cal program, and the violations demonstrate a pattern or practice of fraud, abuse, or provision of unnecessary or substandard medical services.

i. The provider commits any violation of a federal or state statute or regulation governing the Medi-Cal program or of a statute or regulation governing the provider's profession or occupation and the violation represents a threat of immediate jeopardy or significant harm to any Medi-Cal beneficiary or to the public welfare.

j. The provider submits claims for payment that subject a provider to suspension under Section 14043.61.

k. The provider submits claims for payment for services, goods, supplies, or merchandise rendered at a location other than the location for which the provider number was issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status was granted.

f. The provider has not paid its fine, or has a debt due and owing, including overpayments and penalty assessments, to any federal, state, or local government entity that relates to Medicare, Medicaid, Medi-Cal, or any other federal or state health care program, and has not made satisfactory arrangements to fulfill the obligation or otherwise been excused by legal process from fulfilling the obligation.

27. **Provider Suspension; Appeal Rights; Reinstatement.** Provider agrees that it is to be subject to the following suspension actions. Provider further agrees that the suspension of Provider shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment, either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the suspension.

a. **Automatic Suspensions/Mandatory Exclusions.** The provider shall be automatically suspended under the following circumstances:

(1) Upon notice from the Secretary of the United States Department of Health and Human Services that Provider has been excluded from participation in the Medicare or Medicaid programs. No administrative appeal of a suspension on this ground shall be available to Provider. (Welfare and Institutions Code, Section 14123(b),(c)).

(2) If Provider has license(s), certificate(s), or other approval(s) to provide health care services, revoked or suspended by a federal, California, or another state's licensing, certification, or approval authority, has otherwise lost that/those license(s), certificate(s), or approval(s), or has surrendered that/those license(s), certificate(s), or approval(s) while a disciplinary hearing on that license, certificate, or approval was pending. (Welfare and Institutions Code, Section 14043.6).

(3) If Provider is convicted of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Suspension following conviction is not subject to the proceedings under Welfare and Institutions Code, Section 14123(c). However, the director may grant an informal hearing at the request of the provider to determine in the director's sole discretion if the circumstances surrounding the conviction justify rescinding or otherwise modifying the suspension.

b. **Permissive Suspensions/Permissive Exclusions.** The provider may be suspended under the following circumstances:

(1) Provider violates any of the provisions of Chapter 7 of the Welfare and Institutions Code (commencing with Section 14000 except for Sections 14043–14044), or Chapter 8 (commencing with Section 14200) or any rule or regulations promulgated by DHCS pursuant to those provisions. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14123(a),(c)).

(2) Provider fails to comply with DHCS' request to examine or receive copies of the books and records pertaining to services rendered to Medi-Cal beneficiaries. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14124.2).

(3) Provider participating in the Medi-Cal dental program provides services, goods, supplies, or merchandise that are below or less than the standard of acceptable quality, as established by the California Dental Association Guidelines for the Assessment of Clinical Quality and Professional Performance, Copyright 1995, Third Edition, as periodically amended. (Welfare and Institutions Code, Section 14123(f)).

c. **Temporary Suspension.** The provider may be temporarily suspended under the following circumstances:

(1) Provider fails to disclose all information as required in federal Medicaid regulations or any other information required by DHCS, or discloses false information. Administrative appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.2(a)).

(2) If it is discovered that Provider is under investigation for fraud or abuse. Administrative appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.36(a)).

(3) Provider fails to remediate discrepancies discovered as a result of an unannounced visit to Provider. Administrative appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.7(c)).

(4) When necessary to protect the public welfare or the interests of the Medi-Cal program. Administrative appeal pursuant to Health and Safety Code, Section 100171. (Welfare and Institutions Code, Section 14123(c)).

(5) Provider submits claims for payment under any provider number from an individual or entity that is suspended, excluded or otherwise ineligible. This includes a provider on the Suspended and Ineligible Provider List or any list published by the Office of the Inspector General or the Department of Health and Human Services. Appeal pursuant to Welfare and Institutions Code, Section 14043.65. (Welfare and Institutions Code, Section 14043.61).

28. **Provider Termination, Imposition of Federal Sanctions, and Appeal Rights for Long Term Care Facilities.** Provider agrees that it is subject to any federal sanctions authorized under the state plan including termination of this provider agreement in accordance with federal law. Provider further agrees that the termination of this provider agreement or imposition of other federal sanctions authorized under the state plan shall include deactivation of all of Provider's provider numbers and shall preclude Provider from submitting claims for payment either personally or through claims submitted by any individual, clinic, group, corporation, or other association to the Medi-Cal program for any services, supplies, goods, or merchandise that provider has provided directly or indirectly to a Medi-Cal beneficiary, except for services, supplies, goods, or merchandise provided prior to the termination or imposition of sanctions.

a. **Skilled Nursing Facility and Intermediate Care Facility Appeal Procedures.** SNF and ICF Medi-Cal Providers shall have the appeal rights set forth in Article 1.6 of Chapter 3 of Division 3 of Title 22.

b. **Intermediate Care Facilities-Mental Retardation Appeal Procedures.** Intermediate Care Facilities-Developmentally Disabled; Intermediate Care Facilities-Developmentally Disabled-Habilitative; Intermediate Care Facilities-Developmentally Disabled-Nursing shall have the appeal rights set forth in 42 CFR 431.153 and 431.154.

29. **Liability of Group Providers.** Provider agrees that, if it is a provider goup, the group, and each member of the group, are jointly and severally liable for any breach of this Agreement, and that action against any of the providers in the provider group may result in action against all of the members of the provider group.

30. **Legislative and Congressional Changes.** Provider agrees that this Agreement is subject to any future additional requirements, restrictions, limitations, or conditions enacted by the California Legislature or the United States Congress which may affect the provisions, terms, conditions, or funding of this Agreement in any manner.

31. **Provider Capacity.** Provider agrees that Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

32. **Indemnification.** Provider agrees to indemnify, defend, and save harmless the State of California, its officers, agents, and employees, from any and all claims and losses accruing or resulting to any and all persons, firms, or corporations furnishing or supplying services, materials, or supplies in connection with Provider's performance of this Agreement, and from any and all claims and losses accruing or resulting to any Medi-Cal beneficiary, or to any other person, firm, or corporation who may be injured or damaged by Provider in the performance of this Agreement.

33. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

34. **Venue.** Venue for all actions, including federal actions, concerning this Agreement, lies in Sacramento County, California, or in any other county in which the California Department of Justice maintains an office.

35. **Titles.** The titles of the provisions of this Agreement are for convenience and reference only and are not to be considered in interpreting this Agreement.

36. **Severability.** If one or more of the provisions of this Agreement shall be invalid, illegal, void, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. Either party having knowledge of such a provision shall promptly inform the other of the presumed nonapplicability of such provision. Should the nonapplicable provision go to the heart of this Agreement, the Agreement shall be terminated in a manner commensurate with the interests of both parties.

37. **Assignability.** Provider agrees that it has no property right in or to its status as a Provider in the Medi-Cal program or in or to the provider number(s) assigned to it, and that Provider may not assign its provider number for use as a Medi-Cal provider, or any rights and obligations it has under this Agreement except to the extent purchasing owner is joining this provider agreement with successor liability with joint and several liability.

38. **Waiver.** Any action or inaction by DHCS or any failure of DHCS on any occasion, to enforce any right or provision of this Agreement, shall not be interpreted to be a waiver by DHCS of its rights hereunder and shall not prevent DHCS from enforcing such provision or right on any future occasion. The rights and remedies of DHCS herein are cumulative and are in addition to any other rights or remedies that DHCS may have at law or in equity.

39. **Complete Integration.** This Agreement, including any attachments or documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of this Agreement.

40. **Amendment.** No alteration or variation of the terms or provisions of this Agreement shall be valid unless made in writing and signed by the parties to this Agreement, and no oral understanding or agreement not set forth in this Agreement, shall be binding on the parties to this Agreement.

41. **Provider Attestation.** Provider agrees that all information it submits on the application form for enrollment, this Agreement, and all attachments or changes to either, is true, accurate, and complete to the best of Provider's knowledge and belief. Provider further agrees to sign the application form for enrollment, this Agreement, and all attachments or changes to either, under penalty of perjury under the laws of the State of California.

Provider agrees that compliance with the provisions of this agreement is a condition precedent to payment to provider.

The parties agree that this agreement is a legal and binding document and is fully enforceable in a court of competent jurisdiction. The provider signing this agreement warrants that he/she has read this agreement and understands it.

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true, accurate, and complete to the best of my knowledge and belief.

I declare I am the provider or I have the authority to legally bind the provider, which is an entity and not an individual person.

1. Printed legal name of provider

2. Printed name of person signing this declaration on behalf of provider (if an entity or business name is listed in Item 1 above)

3. Original signature of provider or representative if this provider is an entity other than an individual person as sole proprietor

4. Title of person signing this declaration

5. Notary Public (Affix notary seal or stamp in the space below)

Executed at: _____ (City), _____ (State) on _____ (Date)

Applicants and providers licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act ARE NOT REQUIRED to have this form notarized. If notarization is required, the Certificate of Acknowledgement signed by the Notary Public must be in the form specified in Section 1189 of the Civil Code.

6. **Contact Person's Information**

☐ Check here if you are the same person identified in Item 2. If you checked the box, provide only the email address and phone number below.

Contact Person's Name (last) (first) (middle) (gender)

☐ Male ☐ Female

Title/Position | Email address | Telephone Number

Privacy Statement
(Civil Code Section 1798 et seq.)

All information requested on the application, the disclosure statement, and the provider agreement is mandatory with the exception of the social security number for any person other than the person or entity for whom an IRS Form 1099 must be provided by the Department pursuant to 26 USC 6041. This information is required by the Department of Health Care Services, Provider Enrollment Division, by the authority of Welfare and Institutions Code Section 14043.2(a). The consequences of not supplying the mandatory information requested are denial of enrollment as a Medi-Cal provider or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program. The consequence of not supplying the voluntary social security number information requested is delay in the application process while other documentation is used to verify the information supplied. Any information provided will be used to verify eligibility to participate as a provider in the Medi-Cal program. Any information may also be provided to the State Controller's Office, the California Department of Justice, the Department of Consumer Affairs, the Department of Corporations, or other state or local agencies as appropriate, fiscal intermediaries, managed care plans, the Federal Bureau of Investigation, the Internal Revenue Service, Medicare Fiscal Intermediaries, Centers for Medicare and Medicaid Services, Office of the Inspector General, Medicaid, and licensing programs in other states.

EXHIBIT 6

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 09/06/2019)

ST. VINCENT MEDICAL CENTER (NPI# 1124004304) (OSHPD# 106190762)

PHASE V		DUE DATE	AMOUNT DUE		AMOUNT PAID		WITHHELD		OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)								
2016/17	CYCLE 1 (01/01/2017-03/31/2017)	2/5/2018	$2,967,293.00	-	$0.00	-	$2,967,293.00	=	$0.00
	CYCLE 2 (04/01/2017-06/30/2017)	2/28/2018	$2,967,293.00	-	$0.00	-	$2,967,293.00	=	$0.00
	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	$2,482,372.56	-	$2,482,372.56	-	$0.00	=	$0.00
2017/18	CYCLE 3 (07/01/2017-09/30/2017)	3/21/2018	$3,295,382.00	-	$0.00	-	$3,295,382.00	=	$0.00
	CYCLE 4 (10/01/2017-12/31/2017)	4/11/2018	$3,295,382.47	-	$0.00	-	$3,295,382.47	=	$0.00
	CYCLE 5 (01/01/2018-03/31/2018)	5/2/2018	$3,295,382.00	-	$0.00	-	$3,295,382.00	=	$0.00
	CYCLE 6 (04/01/2018-06/30/2018)	7/11/2018	$3,295,382.00	-	$0.00	-	$3,295,382.00	=	$0.00
	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	$2,560,919.99	-	$2,560,919.99	-	$0.00	=	$0.00
	Managed Care 2 (Directed A) (07/01/2017-12/31/2017)	8/22/2019	$1,667,296.00	-	$1,667,296.00	-	$0.00	=	$0.00
	Managed Care 2* (Directed B) (01/01/2018-06/30/2018)	TBD	$908,143.74	-	$0.00	-	$0.00	=	$908,143.74
2018/19	CYCLE 7 (07/01/2018-09/30/2018)	10/3/2018	$3,433,071.00	-	$0.00	-	$3,433,071.00	=	$0.00
	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	$3,433,071.00	-	$0.00	-	$3,433,071.00	=	$0.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	$3,433,071.00	-	$3,433,071.00	-	$0.00	=	$0.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	$3,342,337.51	-	$3,342,337.51	-	$0.00	=	$0.00
	Managed Care 3* (Passthrough) (07/01/2018-08/31/2019)	TBD	$2,828,768.00	-	$0.00	-	$0.00	=	$2,828,768.00
	Managed Care 3* (Directed) (07/01/2018-08/31/2019)	TBD	$2,828,768.00	-	$0.00	-	$0.00	=	$2,828,768.00
Total Outstanding Balance									$6,565,679.74

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 09/06/2019)

SETON MEDICAL CENTER (NPI# 1154428688) (OSHPD# 106410817)

PHASE V		DUE DATE	AMOUNT DUE		AMOUNT PAID		WITHHELD		OUTSTANDING BALANCE
FISCAL YEAR	CYCLE (PERIOD)								
2016/17	CYCLE 1 (01/01/2017-03/31/2017)	2/5/2018	$2,040,467.00	-	$0.00	-	$2,040,467.00	=	$0.00
	CYCLE 2 (04/01/2017-06/30/2017)	2/28/2018	$2,040,467.00	-	$0.00	-	$2,040,467.00	=	$0.00
	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	$1,870,925.10	-	$1,870,925.10	-	$0.00	=	$0.00
2017/18	CYCLE 3 (07/01/2017-09/30/2017)	3/21/2018	$2,223,369.00	-	$0.00	-	$1,348,558.98	=	$874,810.02
	CYCLE 4 (10/01/2017-12/31/2017)	4/11/2018	$2,223,368.94	-	$0.00	-	$0.00	=	$2,223,368.94
	CYCLE 5 (01/01/2018-03/31/2018)	5/2/2018	$2,223,369.00	-	$0.00	-	$0.00	=	$2,223,369.00
	CYCLE 6 (04/01/2018-06/30/2018)	7/11/2018	$2,223,369.00	-	$0.00	-	$0.00	=	$2,223,369.00
	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	$1,893,251.67	-	$1,893,251.67	-	$0.00	=	$0.00
	Managed Care 2 (Directed A) (07/01/2017-12/31/2017)	8/22/2019	$1,232,608.00	-	$1,232,608.00	-	$0.00	=	$0.00
	Managed Care 2* (Directed B) (01/01/2018-06/30/2018)	TBD	$671,377.91	-	$0.00	-	$0.00	=	$671,377.91
2018/19	CYCLE 7 (07/01/2018-09/30/2018)	10/3/2018	$2,293,835.00	-	$0.00	-	$0.00	=	$2,293,835.00
	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	$2,293,835.00	-	$0.00	-	$0.00	=	$2,293,835.00
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	$2,293,835.00	-	$2,293,835.00	-	$0.00	=	$0.00
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	$2,231,441.90	-	$2,231,441.90	-	$0.00	=	$0.00
	Managed Care 3* (Passthrough) (07/01/2018-08/31/2019)	TBD	$2,061,897.50	-	$0.00	-	$0.00	=	$2,061,897.50
	Managed Care 3* (Directed) (07/01/2018-08/31/2019)	TBD	$2,061,897.50	-	$0.00	-	$0.00	=	$2,061,897.50
Total Outstanding Balance									$16,927,759.87

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

Hospital Quality Assurance Fee (HQAF) Debt Summary (updated 08/23/2019)

ST. FRANCIS MEDICAL CENTER (NPI# 1487697215) (OSHPD# 106190754)

PHASE V		DUE DATE	AMOUNT DUE		AMOUNT PAID		WITHHELD		OUTSTANDING BALANCE UP TO 8/31/18
FISCAL YEAR	CYCLE (PERIOD)								
2016/17	Managed Care 1 (Passthrough) (01/01/2017-06/30/2017)	3/13/2019	$5,256,386.70	-	$5,256,386.70	-	$0.00	=	$0.00
2017/18	Managed Care 2 (Passthrough) (07/01/2017-06/30/2018)	3/13/2019	$5,324,520.88	-	$5,324,520.88	-	$0.00	=	$0.00
	Managed Care 2 (Directed A) (07/01/2017-12/31/2017)	8/22/2019	$3,466,549.00	-	$3,466,549.00	-	$0.00	=	$0.00
	Managed Care 2* (Directed B) (01/01/2018-06/30/2018)	TBD	$1,888,160.53	-	$0.00	-	$0.00	=	$1,888,160.53
2018/19	CYCLE 8 (10/01/2018-12/31/2018)	1/2/2019	$6,703,466.00	-	$0.00	-	$6,703,466.00	=	[redacted]
	CYCLE 9 (01/01/2019-03/31/2019)	4/3/2019	$6,703,466.00	-	$6,703,466.00	-	$0.00	=	[redacted]
	CYCLE 10 (04/01/2019-06/30/2019)	7/3/2019	$6,520,041.59	-	$6,520,041.59	-	$0.00	=	[redacted]
	Managed Care 3* (Passthrough) (07/01/2018-08/31/2018)	TBD	$973,664.57	-	$0.00	-	$0.00	=	$973,664.57
	Managed Care 3* (Directed B) (07/01/2018-08/31/2018)	TBD	$973,664.57	-	$0.00	-	$0.00	=	$973,664.57
Total Outstanding Balance									**$3,835,489.67**

*Amount due is an estimate and is subject to change based upon Medi-Cal Managed Care utilization at the time of payment and fee liability from Medi-Cal fee-for-service reconciliation activities of the prior program period.

DECLARATION OF SHIELA MENDIOLA

I, Shiela Mendiola, declare as follows:

1. The following matters stated in this declaration are true to my personal knowledge.

2. I am employed as the Section Chief of Medi-Cal Supplemental Payment Section, Staff Services Manager II, for the Safety Net Financing Division (SNFD) of the California Department of Health Care Services (DHCS). In that position, I oversee supplemental payment programs for the SNFD, and am a custodian of records for the Supplemental Reimbursement for Construction-Renovation Reimbursement Program. I have been in my current position since January 2015.

3. Senate Bill (SB) 1732 established California Welfare and Institutions Code Section 14085.5, Statutes of 1989. This is an ancillary program to the Medi-Cal Selective Provider Contracting Program. The Construction Renovation Reimbursement Program is commonly referred to as the SB 1732 program. This statute requires the State, through the Department of Health Care Services to provide supplemental reimbursement for the debt service incurred on revenue bonds used to finance eligible projects for qualifying hospitals, for either construction, renovation, replacement or retrofitting of hospitals and/or their ancillary or fixed equipment used to provide patient care. Subsequent Senate and Assembly bills amended this statute, adding provisions to narrowly define the time periods and criteria for hospital eligibility under the Construction Renovation Reimbursement Supplemental Payment Program.

4. Supplemental reimbursements under the Supplemental Reimbursement for Construction-Renovation Reimbursement Program to an eligible hospital allows two types of funding, State General Funds and matched Federal Funding. State general funds are used to draw down Federal Financial Participation Title XIX funding. State general fund is used to draw down Federal Match funding (Title XIX). This follows the supplemental reimbursement and reconciliation methodologies described in Attachment 4.19-A, pages 1 of California's State Medicaid Plan.

5. The interim reconciliation for St. Francis Medical Center beginning in State Fiscal Year (SFY) 2013-14 resulted in an overpayment of $662,327.67 and is pending repayment from this provider. The Department of Health Care Services (DHCS) sent a demand letter to St. Francis Hospital on May 14, 2018 for SFY 2013-14 interim reconciliation overpayment for $662,327.67. Since then, St. Francis and DHCS have been in both written and verbal communication regarding the backup documentation and the repayment.

In March 2019, DHCS followed up on the overpayment and provided St. Francis with additional backup calculation documentation. On July 31, 2019, St. Francis notified DHCS management through a verbal conversation that St. Francis is undergoing bankruptcy proceedings.

I declare under the laws of perjury of the State of California that the statements in this declaration are true and correct.

Executed at Sacramento, California, August 14, 2019

Shiela Mendiola

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: California Office of the Attorney General, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

A true and correct copy of the foregoing document entitled:

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

DECLARATION OF HANH VO IN SUPPORT OF 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

DECLARATION OF SHIELA MENDIOLA

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **September 11, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Lance N Jurich ljurich@loeb.com
David E Lemke david.lemke@wallerlaw.com
Bryan L Ngo bngo@fortislaw.com
Mary H Haas maryhaas@dwt.com
Mark A Neubauer mneubauer@carltonfields.com
Latonia Williams lwilliams@goodwin.com
Latonia Williams lwilliams@goodwin.com
Alicia K Berry Alicia.Berry@doj.ca.gov
Hutchison B Meltzer hutchison.meltzer@doj.ca.gov
Julie H Rome-Banks julie@bindermalter.com

Eric J Fromme efromme@tocounsel.com

Adam G Wentland awentland@tocounsel.com
Keith Patrick Banner kbanner@greenbergglusker.com
Brian L Davidoff bdavidoff@greenbergglusker.com
Eric J Fromme efromme@tocounsel.com
Adam G Wentland awentland@tocounsel.com
Kyrsten Skogstad kskogstad@calnurses.org
Michael B Reynolds mreynolds@swlaw.com
Debra Riley driley@allenmatkins.com
Elizabeth Berke-Dreyfuss edreyfuss@wendel.com
William M Rathbone wrathbone@grsm.com
Jeffrey C Wisler jwisler@connollygallagher.com
Rose Zimmerman rzimmerman@dalycity.org
Peter J Benvenutti pbenvenutti@kellerbenvenutti.com
Jane Kim jkim@kellerbenvenutti.com
Gregory R Jones gjones@mwe.com
Kyra E Andrassy kandrassy@swelawfirm.com
Stephen F Biegenzahn efile@sfblaw.com
Karl E Block kblock@loeb.com
Shawn M Christianson cmcintire@buchalter.com
Andy J Epstein taxcpaesq@gmail.com
Michael G Fletcher mfletcher@frandzel.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Lawrence B Gill lgill@nelsonhardiman.com
Gary E Klausner gek@lnbyb.com
Craig G Margulies Craig@MarguliesFaithlaw.com
Monserrat Morales mmorales@marguliesfaithlaw.com
Kevin H Morse kevin.morse@saul.com
Alan I Nahmias anahmias@mbnlawyers.com
Mark A Neubauer mneubauer@carltonfields.com
Abigail V O'Brient avobrient@mintz.com
Mark D Plevin mplevin@crowell.com
David M Poitras dpoitras@wedgewood-inc.com
Michael B Reynolds mreynolds@swlaw.com
Mary H Rose mrose@buchalter.com
Megan A Rowe mrowe@dsrhealthlaw.com
Rosa A Shirley rshirley@nelsonhardiman.com
Andrew Still astill@swlaw.com
Gary F Torrell gft@vrmlaw.com

Jason Wallach jwallach@ghplaw.com
Gerrick Warrington gwarrington@frandzel.com
Steven T Gubner sgubner@bg.law
Phillip K Wang phillip.wang@rimonlaw.com
Elan S Levey elan.levey@usdoj.gov
John Mark Jennings johnmark.jennings@kutakrock.com
Lisa M Peters lisa.peters@kutakrock.com
Marilyn Klinger MKlinger@smtdlaw.com
Cristina E Bautista cristina.bautista@kattenlaw.com
Marsha A Houston mhouston@reedsmith.com
Michael D Breslauer mbreslauer@swsslaw.com
Christopher J Petersen cjpetersen@blankrome.com
Mariam Danielyan md@danielyanlawoffice.com
Ivan L Kallick ikallick@manatt.com
Paul R. Glassman pglassman@sycr.com
Kyra E Andrassy kandrassy@swelawfirm.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Michael S Held mheld@jw.com
Michael St James ecf@stjames-law.com
M Douglas Flahaut flahaut.douglas@arentfox.com
Robert M Hirsh Robert.Hirsh@arentfox.com
Aram Ordubegian ordubegian.aram@arentfox.com
Sabrina L Streusand Streusand@slollp.com
Alan I Nahmias anahmias@mbnlawyers.com
Florice Hoffman fhoffman@socal.rr.com
Rosa A Shirley rshirley@nelsonhardiman.com
Ralph J Swanson ralph.swanson@berliner.com
Chris D. Kuhner c.kuhner@kornfieldlaw.com
James Cornell Behrens jbehrens@milbank.com
Jennifer L Nassiri jennifernassiri@quinnemanuel.com
Eric D Goldberg eric.goldberg@dlapiper.com
Monique D Jewett-Brewster mjb@hopkinscarley.com
Damarr M Butler butler.damarr@pbgc.gov
Lori A Butler butler.lori@pbgc.gov
Melissa T Ngo ngo.melissa@pbgc.gov
Marianne S Mortimer mmortimer@sycr.com
Sara Chenetz schenetz@perkinscoie.com
Simon Aron saron@wrslawyers.com
Richard A Lapping richard@lappinglegal.com

Mark A Serlin ms@swllplaw.com
Stephen F Biegenzahn efile@sfblaw.com
Paul J Laurinplaurin@btlaw.com
Ron Bender rb@lnbyb.com
Monica Y Kim myk@lnbrb.com
Emily P Rich erich@unioncounsel.net
Neal L Wolf nwolf@hansonbridgett.com
Steven G. Polard spolard@ch-law.com
David N Crapo dcrapo@gibbonslaw.com
Kevin M Eckhardt keckhardt@huntonak.com
Brian D Huben hubenb@ballardspahr.com
Latonia Williams lwilliams@goodwin.com
Mark A Neubauer mneubauer@carltonfields.com
Matthew S Walker matthew.walker@pillsburylaw.com
Lori L Purkey bareham@purkeyandassociates.com
Robert N Amkraut ramkraut@foxrothschild.com
Nathan A Schultz nschultz@foxrothschild.com
Darryl S Laddin bkrfilings@agg.com
Howard Camhi hcamhi@ecjlaw.com
John R OKeefe, Jr jokeefe@metzlewis.com
Paul J Pascuzzi ppascuzzi@ffwplaw.com
Jason D Strabo jstrabo@mwe.com
Aaron Davis aaron.davis@bryancave.com
Andrew J Ziaja aziaja@leonardcarder.com
Joseph A Kohanski jkohanski@bushgottlieb.com
Seth B Shapiro seth.shapiro@usdoj.gov
Alvin Mar alvin.mar@usdoj.gov
Hatty K Yip hatty.yip@usdoj.gov
Scott E Blakeley seb@blakeleyllp.com
Samuel R Maizel samuel.maizel@dentons.com
John A Moe, II john.moe@dentons.com
Tania M Moyron tania.moyron@dentons.com
Bruce Bennett bbennett@jonesday.com
Bruce Bennett bbennett@jonesday.com
Dustin P Branch branchd@ballardspahr.com
Matthew S Walker matthew.walker@pillsburylaw.com
Charles E Nelson nelsonc@ballardspahr.com
Michael Hogue hoguem@gtlaw.com
Thomas J Polis tom@polis-law.com

Lior Katz katzlawapc@gmail.com

2. SERVED BY UNITED STATES MAIL:

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **September 11, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

Melissa W Jones
Waller Lansden Dortch & Davis, LLP
511 Union St., Suite 2700
Nashville, TN 37219

Scott Schoeffel
THEODORA ORINGHER PC
535 Anton Boulevard, Ninth Floor
Costa Mesa, CA 92626-7109

Shawn C Groff
1330 Broadway Suite 1450
Oakland, CA 94612

Mollie Simons
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

Brent F Basilico
Sellar Hazard & Lucia
201 North Civic Dr., Ste. 145
Walnut Creek, CA 94596

Steven M Berman
101 E Kennedy Blvd., Ste. 2800
Tampa, FL 33602
Rachel C Quimby
Daglian Law Group APLC
701 N Brand Blvd Ste 610

Glendale, CA 91203

Phillip G Vermont
Randick O'Dea & Tooliatos LLP
5000 Hopyard Rd., Ste 225
Pleasanton, CA 94588

Margaret M Anderson
Fox Swibel Levin & Carroll LLP
200 West Madison St
Chicago, IL 60606

Ryan Schultz
Fox Swibel Levin & Carroll LLP
200 W. Madison Street
Suite 3000
Chicago, IL 60606

Schuyler Carroll
PERKINS COIE, LLP
30 ROCKEFELLER PLZ FL 22,
New York, New York 10111

Donald R Kirk
Carlton Fields
4221 W Boy Scout Blvd Ste 1000
Tampa, FL 33607

John Ryan Yant
Carlton Fields Jorden Burt, P.A.
4221 W Boy Scout Blvd, Ste. 1000
Tampa, FL 33607

John R O'Keefe, Jr.
Metz Lewis Brodman Must O'Keefe LLC
535 Smithfield St Ste 800
Pittsburgh, PA 15222
Nathan F Coco
McDermott Will & Emery
444 West Lake Street

Chicago, IL 60606-0029

Megan Preusker
McDermott Will & Emery
444 West Lake Street
Chicago, IL 60606-0029

Jason M Reed
Maslon LLP
90 S 7th St Ste 3300
Minneapolis, MN 55402

Clark Whitmore
Maslon LLP
3300 Wells Fargo Center
90 S 7th St
Minneapolis, MN 55402

Daniel S Bleck
Mintz, Levin, et al
One Financial Center
Boston, MA 02111

Ian A Hammel
Mintz Levin Cohn Ferris Glovsky & Popeo
One Financial Center
Boston, MA 02111

Paul J Ricotta
Mintz Levin Cohn Ferris Glovsky and Pope
Chrysler Center
666 Third Ave
New York, NY 10017

Sam J Alberts
DENTONS US LLP
1900 K Street NW
Washington, DC 20006

Benjamin Rosenblum
250 Vesey St
New York, NY 10281

William P Wassweiler
Ballard Spahr LLP
80 S Eighth St Ste 2000
Minneapolis, MN 55402

3. SERVED BY OVERNIGHT MAIL AND ELECTRONIC MAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **September 11, 2019**, I served the following persons and/or entities by overnight mail and electronic mail as follows.

Samuel Maizel, Esq. (on ECF)
Dentons US LLP
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017
Samuel.Maizel@dentons.com

Gregory A. Bray, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067

Hatty Yip, Esq. (on ECF)
Office of the United States Trustee
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017
Hatty.Yip@usdoj.gov

4. SERVED BY PERSONAL DELIVERY: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **September 11, 2019**, I served the following persons and/or entities by personal delivery as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles
United States Bankruptcy Court
255 East Temple Street
Courtroom 1568
Los Angeles, CA 90012

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

September 11, 2019	Stacy McKellar	
Date	*Printed Name*	*Signature*

Exhibit K

Exhibit K

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
JOHN A. MOE, II (Bar No. 066893)
john.moe@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

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.*,

Debtor and Debtor 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 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
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

DEBTORS' REPLY TO CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES OBJECTION TO DEBTORS' SALE OF ASSETS TO STRATEGIC GLOBAL MANAGEMENT

Hearing:
Date: September 25, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS 3

A. General Background 3

B. The SGM Sale and DHCS Objection 3

C. The DHCS Supplemental Objection 5

D. The Debtors' Response to the DHCS Supplemental Objection 6

E. Improper Setoffs 7

III. ARGUMENT 7

A. The Provider Agreement Is Not A Contract. 7

1. The Provider Agreements Are Not Contracts Because They Impose No Duties On The DHCS. 8

2. The DHCS Objections Ignore Controlling Ninth Circuit Precedent That Provider Agreements Are Not Contracts. 9

3. If The Provider Agreements Are Not Contracts Outside Of Bankruptcy They Do Not Become Contracts In A Bankruptcy Case. 10

B. The Medi-Cal Provider Agreements Are Property Of The Debtors' Estates Which Can Be Sold Through § 363. 13

C. The Medi-Cal Provider Agreement Can Be Sold Free And Clear Of Successor Liability. 15

D. Even If The Medi-Cal Provider Agreement Is A Contract, The Debtors Do Not Have To Pay The HQAF Fees As A Cure. 17

IV. CONCLUSION 18

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

TABLE OF AUTHORITIES

Page(s)

Cases

U.S. ex rel. Acad. Health Ctr., Inc. v. Hyperion Foundation, Inc.,
2014 U.S. Dist. LEXIS 93185 (S.D. Miss., July 9, 2014) 10

Armstrong v. Exceptional Child Ctr., Inc.,
135 S. Ct. 1387-88 (2015) 8

In re BDK Health Mgmt., Inc.,
No. 98-609-B1, 1998 Bankr. LEXIS 2031 (Bankr. M.D. Fla., Nov. 16, 1998) 13

Butner v. United States,
440 U.S. 48 (1979) 11

Folger Adam Sec., Inc. v DeMatteis/Macgregor, JV,
209 F.3d 252 (3d Cir. 2000) 17

In re Frontier Properties, Inc.,
979 F.2d 1358 (9th Cir. 1992) 10

In re Fugazy Express, Inc.,
124 B.R. 426 (S.D.N.Y. 1991) 14, 15

In re Gardens Regional Hospital and Medical Center, Inc.,
569 B.R. 788 (Bankr. C.D. Cal. 2017) 9

Greater Dallas Homecare Alliance v. United States,
10 F. Supp.2d. 638 (N.D. Tex 1998) 10

In re Grumman Olson Industries. Inc.,
467 B.R. 694 (S.D.N.Y 2012) 16

Guzman v. Shewry,
552 F.3d 941 (9th Cir. 2008) 1, 10

In re Hoffman,
53 B.R. 874 (Bankr. D.R.I. 1985) 15

Hollander v. Brezenoff,
787 F.2d 834 (2d Cir. 1986) 10

Homecare Ass''n of America Inc. v. United States,
1998 U.S. Dist. Lexis 20515 (W.D. Okla. Aug., 1998) 10

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

In re Kings Terrace Nursing Home and Health Related Facility,
1995 WL 65531 (Bankr. S.D.N.Y. Jan. 27, 1995), *aff'd*, 184 B.R. 200 (S.D.N.Y. 1995) 13

Maximum Care Home Health Agency v. HCFA,
No. 3-97-CV-1451-R, 1998 WL 901642 (N.D. Tex. Apr. 14, 1998) 10

Maynard v. Bonta,
No. CV 02-06539, 2003 U.S. Dist. LEXIS 16201 (C.D. Cal. Aug. 29, 2003) 15

Mission Prods. Holdings, Inc. v. Tempnology, LLC,
139 S. Ct. 1652 (May 20, 2019) 11

Mlq Investors, L.P., v. Pac. Quadracasting, Inc.,
146 F.3d 746 (9th Cir. 1998) 15

Myers v. United States,
297 B.R. 774 (S.D. Cal. 2003) 16

Nieves v. Hess Oil Virgin Islands Corp.,
819 F.2d 1237 (3d Cir. 1987) 13

Orthopaedic Hospital v. Belshe,
103 F.3d 1491 (9th Cir. 1997) 8

PAMC, Ltd. v. Sebelius,
747 F.3d 1214 (9th Cir. 2014) 9, 12, 14

PBBPC, Inc. v. OPK Biotech, LLC (In re PBBPC, Inc.),
484 B.R. 860 (1st Cir. B.A.P. 2013) 16

Pennhurst State Sch. & Hosp. v. Halderman,
451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694 (1981) 13

In re Re Tak Communications,
985 F.2d 916 (7th Cir. 1993) 15

U.S. ex rel. Roberts v. Aging Care Home Health, Inc.,
474 F. Supp. 2d 810 (W.D. La. 2007) 10

In re Rowland,
292 B.R. 815 (Bankr. E.D. Pa. 2003) 18

In re Sigel & Co., Ltd.,
923 F.2d 142 (9th Cir. 1991) 18

In re Smith,
94 B.R. 220 (Bankr. M.D. Ga. 1988) 14, 15

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Matter of Superior Toy & Manufacturing Company, Inc.,
78 F.3d 1169 (7th Cir. 1996) 18

Tatum v. RJR Pension Inv. Comm.,
761 F.3d 346 (4th Cir. 2014) 13

Taylor v. Freeland & Kronz,
503 U.S. 638 (1992) 15

In re Tougher Industries,
2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013) 16

In re UAL Corp.,
635 F.3d 312 (7th Cir. 2011) 18

United Mine Workers of America 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.),
99 F.3d 573 (4th Cir. 1996) 16

United States v. Malik,
No. 12-1234, 2013 WL 3948074 (D.D.C. June 13, 2013) 12

United States v. Tenant Healthcare Corp.,
No. CV-03-206, 2005 WL 3784642 (C.D. Cal. Dec. 22, 2005) 11

United States v. Travelers Indem. Co.,
802 F.2d 1164 (9th Cir. 1986) 9

United States v. Whiting Pools, Inc.,
462 U.S. 198 (1983) 15

In re Vitalsigns Homecare, Inc.,
396 B.R. 232 (Bankr. D. Mass. 2008) 17

WBO P'ship v. Virginia Dept. of Medical Assistance Servs. (In re WBO P'ship),
189 B.R. 97 (Bankr. E.D. Va. 1995) 16

Statutes

11 United States Code
§§ 101-1532 ..... 1, 14, 15
§ 363 ..... *passim*
§ 365 ..... *passim*

42 United States Code
§ 1396a(a)(30)(A) 8
§ 1396a(a)(37)(B) 15

California Health and Safety Code § 1250(a) 18

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

California Welfare and Institutions Code
§ 14169.51(q) 18
§ 14169.52 18
§ 14169.52(a) et. seq. 4, 5

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

I.

INTRODUCTION

The Debtors are trying to close the sale of their remaining significant assets to the only buyer who made an offer to keep four important community hospitals open and providing essential care to underserved communities, continued employment to thousands of hard-working and dedicated employees, and a meaningful return to creditors. Despite all those powerful reasons for the Department of Health Care Services of the State of California (the "DHCS") to support the proposed sale, instead it objects to the proposed sale of the Debtors' remaining Hospitals (St. Francis Medical Center ("SFMC"), St. Vincent Medical Center ("SVMC") including the St. Vincent Dialysis Center ("SVDC"), and Seton Medical Center ("SMC"), including Seton Medical Center Coastside Campus ("SMCC"), collectively the "Hospitals") to Strategic Global Management, Inc. and/or one or more of its affiliated entities (collectively, "SGM") only with regard to the proposed transfer of the Medi-Cal[1] Provider Agreements between DHCS and the Hospitals. In its two long (although virtually identical) objections (collectively, the "DHCS Objections"), the DHCS argues that the Medi-Cal Provider Agreements (the "Provider Agreement" or "Provider Agreements") are executory contracts which must be transferred pursuant to section § 365 of the Bankruptcy Code,[2] which, according to the DHCS, means that the Debtors must, among other things, pay more than $24 million based on an audit which is subject to significant disputes, as well as any unpaid Hospital Quality Assurance Fees ("HQAF Fees") which are due to be paid in the future, and that SGM must assume successor liability for any amounts subsequently discovered to be owed by the Debtors to the DHCS related to the Provider Agreements. In effect, the government agency responsible for overseeing medical assistance to those whose too poor to afford it, is intent on elevating its financial goals over the medical needs of the communities it is supposed

[1] "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 Government to pay a percentage of the costs a state incurs for patient care, and, in return, the state complies with certain federal requirements. California participates in Medicaid through the California Medical Assistance Program ('Medi-Cal'), and has designated [the DHCS] as the agency responsible for its administration." *Guzman v. Shewry*, 552 F.3d 941, 946 (9th Cir. 2008) (internal citations and quotations omitted).

[2] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

to serve.

The DHCS Objections are without merit. DHCS conflates statutory obligations with contractual rights and is wrong on all points. For example, it argues that the Provider Agreement is analogous to the Medicare Provider Agreement, and therefore is a contract, ignoring that (a) the United States argues regularly that the Medicare Provider Agreement is not a contract, (b) the Ninth Circuit Court of Appeals (the "Ninth Circuit") has held that the Medicare Provider Agreement is not a contract, and (c) the Ninth Circuit has stated that the Medi-Cal Provider Agreement is merely "contractual in nature," as opposed to being a contract. Although the DHCS points to obligations imposed on the Debtors by the Medi-Cal Provider Agreement, it cannot point to any obligations imposed on it by the agreement, because DHCS's obligations all arise from statute rather than contract. Absent mutual obligations the Provider Agreements are not a contract.

The DHCS also argues that the Debtors must pay all unpaid HQAF Fees to "cure" existing defaults under the Medi-Cal Provider Agreement, ignoring that hospitals must pay the HQAF Fees as an obligation under statutory law without regard to whether they have a Medi-Cal Provider Agreement. Further, relying on recent audit findings related to fiscal year 2016-17, Medi-Cal now asserts for the first time that the Debtors must pay more than $24 million as a cure, and escrow $70 million for three years, without any explanation of how it arrived at that amount, against any other potential obligations it may subsequently discover. The Debtors dispute these audit results, and is confident that, given an opportunity, they can show that they are not liable for the amounts alleged.

For all the reasons argued below, the Court should overrule the Objection and allow the sale of the Medi-Cal Provider Agreement under § 363 without successor liability and without requiring the payment of the outstanding HQAF Fees or the alleged audit obligations. If the Court determines that Provider Agreements are contracts, however, the Court should set a briefing schedule and subsequent hearing to determine the cure amounts.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

II.

STATEMENT OF FACTS

A. General Background

1. The Hospitals have Medi-Cal provider agreements ("Medi-Cal Provider Agreements") with the DHCS, which enable them to receive Medi-Cal payments for services provided to Medic-Cal beneficiaries. The SFMC Provider Agreement is assigned No. 148769215; the SVMC Provider Agreement is assigned No. 1124004304; the SMC Provider Agreement is assigned No. 1154428688; and the SVDC Provider Agreement is assigned No. CDC70030F.

2. 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 $567 million (including claims of various prepetition secured creditors), and (b) the total of scheduled and filed unsecured claims, including pension claims, may exceed $1.5 billion.

B. The SGM Sale and DHCS Objection

3. The Debtors are selling 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 SGM. The closing of the SGM Sale (the "Closing") is contingent on, among other things, the Attorney General's approval, with conditions that are substantially consistent with the conditions approved by SGM, as set forth on Schedule 8.6 to the SGM asset purchase agreement. *See* Docket No. 2305-1. The Debtors and SGM expect the SGM Sale of the Hospitals to close in mid-to-late October 2019.

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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").

5. 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].

6. On March 22, 2019, the DHCS 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 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 DHCS asserted it was owed the following amounts in connection with the Hospitals, as of March 15, 2019: (a) SFMC - liability arising from the Hospital Quality Assurance Fees Program ("HQAF), California Welfare & Institutions Code, § 14169.52(a) et. seq., in the amount of $30,381,769.53; (b) SVMC (including SVDC) - HQAF liability in the amount of $21,427,707.82; and SMC (including its SMCC campus) - HQAF liabilities in the amount of $28,160,469.45. In the DHCS Objection, the DHCS did not reflect any obligations owed to it related to the Medi-Cal fee-for-service payments in connection with the Hospitals.

7. On March 29, 2019, the DHCS 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 HQAF Fees; (b) against SFMC, assigned Claim No. 134-1, asserting that it is owed $7,302,038.67, based solely on the unpaid HQAF Fees; and (c) against SMC, assigned Claim No. 66-1, asserting that it is owed $ 17,090,035.65, based solely on the unpaid HQAF Fees. The DHCS asserts in its proofs of claims, that, in the aggregate, it is owed approximately $29,679,354 by the Debtors, all solely related to unpaid HQAF Fees. However, all HQAF Fees have been paid in the ordinary course of business during the Bankruptcy Cases and no amounts are presently due and owing to the DHCS.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

8. 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], approving a sale of the Debtors' Hospitals to SGM. Certain counterparties to executory contracts and leases objected to the cure amounts and some of those objections are still being resolved.

C. The DHCS Supplemental Objection

9. On September 11, 2019, the DHCS filed its *Creditor California Department of Health Care Services's Supplemental Objection To (1) Debtors' Motion For 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] (the "DHCS Supplemental Objection"), which asserted that (i) the Debtor had to transfer the Medi-Cal Provider Agreements as executory contracts pursuant to § 365; (ii) the Debtors had to pay all outstanding HQAF Fees; (iii) the Debtors or the Buyers would have to reimburse the DHCS for any outstanding obligations between the Debtors and the DHCS; and (iv) the Debtors would have to escrow $70 million for 36 months for any potential claims which the DHCS might subsequently discover, and if $70 million proved to be insufficient, the Buyer would have to assume liability for the excess amount.

10. In the DHCS Supplemental Objection, the DHCS asserted it was owed the following amounts in connection with the Hospitals, as of September 6, 2019: (a) SFMC - liability arising from the Hospital Quality Assurance Fees Program ("HQAF), California Welfare & Institutions Code, § 14169.52(a) et. seq., in the amount of $3,835,489.67; (b) SVMC (including SVDC) - HQAF liability in the amount of $6,565,679.74; and SMC (including its SMCC campus) - HQAF liabilities in the amount of $16,927,759.87.

11. Further, in the DHCS Supplemental Objection, the DHCS asserted, for the first time, the following obligations owed to it related to the Medi-Cal fee-for-service payments in connection with the Hospitals: (a) SFMC - (i) liability arising from alleged claims adjustments for fiscal year 2016-2017, in the amount of $24,254,503.36, and (ii) an overpayment in the amount of $662,327.67 related to an alleged overpayment for Supplemental Reimbursement for the Construction

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Renovation Reimbursement Program; and (b) SMC - liability in the amount of $4,205.25 based on retroactive claims adjustments for the period July 1, 2016 through June 30, 2017.

D. The Debtors' Response to the DHCS Supplemental Objection

12. With regard to the 2017 audit, the Debtors received audit findings alleging overpayments of $25,176,471 for SFMC for the fiscal period ending June 30, 2017, but these amounts are grossly overinflated and an unlawful overreach by the DHCS's auditors. As background, for claims with dates of service from July 1, 2016, through and including June 30, 2017, DHCS calculated outlier payments based on the cost-to-charge ratio in the cost report filed by SFMC for the fiscal year ending June 30, 2014. DHCS did so despite having more recent and audited data on hand. The data in the cost report filed by SFMC for the fiscal year ending June 30, 2014, established a cost-to-charge ratio of 56.8%. The audited cost-to-charge ratio for fiscal year ending 2014 was approximately 28%. On May 15, 2019, the Debtors received DHCS's audit findings on its cost report for the fiscal year ending June 30, 2017. That report included a number of adjustments that substantially impacted the hospital's cost-to-charge ratio for the fiscal year ending June 30, 2017. Chief among these were: (1) the reduction of days and charges associated with behavioral health patients in adjustments 7, 8, and 9; and (2) the movement of nearly 3,000 bed days from the neonatal intensive care unit to the nursery in adjustment 7, without the movement of any of the corresponding costs or charges. These two adjustments alone accounted for almost the entirety of the reduction of the hospital's cost to charge ratio from 29.3% (as filed) to 23.8% (as audited). The significant reduction of the cost-to-charge ratio applied to calculate outlier payments from 56.8% to 23.8% resulted in the calculation of an approximately $25 million overpayment. The auditor did not present these outlier calculations in the exit conference, depriving the Debtors of their right to review and respond to the calculations.

13. The Debtors dispute the validity of DHCS's audit. As a preliminary matter, the introduction of a reconciliation process in the context of the APR-DRG payment methodology is in direct conflict with the mandate imposed by the Legislature on the DHCS when it granted DHCS the authority to develop and implement the APR-DRG payment methodology. Accordingly, this reconciliation process violates the Legislature's intent for an APR-DRG payment methodology that

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

results in a simple, single transaction. Further, the DHCS audit findings are improper because: (1) the DHCS lacks the authority to adjust outlier payments paid based on a cost to charge ratio from the Provider's as filed fiscal year end 2014 cost report with a cost-to-charge ratio from the Provider's as audited fiscal year end 2017 cost report; (2) the DHCS improperly removed psychiatric services from the Provider's cost report because those psychiatric services were rendered to Medi-Cal beneficiaries, but were not paid by a "HMO;" (3) the DHCS's movement of NICU days and costs to nursery is unjustified because the use of Revenue Code 173 does not indicate that these patients did not receive NICU care, and because the movement of cost without moving the related charges artificially decreases the Provider's cost-to-charge ratio; and (4) the DHCS's audit was procedurally improper because it failed to raise the outlier adjustments (15, 16 and 17) at the audit exit conference, depriving the Provider of due process.

E. Improper Setoffs

14. Medi-Cal has been offsetting, without Court permission, one-hundred percent (100%) of SFMC's fee-for-service payments to pay itself on the alleged overpayments; it has already offset more than $2 million otherwise owed to SFMC.

15. SGM is willing to provide needed services to Medi-Cal beneficiaries and to accept a transfer of the Medi-Cal Provider Agreements, provided that SGM does not incur any exposure for liability under the Medi-Cal Provider Agreements, or otherwise for any Medi-Cal Claims, or HQAF Claims, for goods and services provided, and otherwise for events related to periods, prior to SGM taking possession and control of the Hospitals, 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.

III.

ARGUMENT

A. The Provider Agreement Is Not A Contract.

The DHCS argues that the Provider Agreements are executory contracts, first arguing that the Provider Agreements impose obligations on both parties to the Provider Agreements, and second, arguing by analogy that a Provider Agreement is like a Medicare Provider Agreement, and

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

therefore is also a contract. It strikingly fails to address binding, contrary precedent on the latter issue, and provides no evidence as to any obligations imposed on the DHCS from its purported contract that are independent of other, pre-existing legal obligations. As this Court has previously noted, pre-existing legal obligations cannot provide consideration for a contract, which dooms the DHCS argument with regard to the Provider Agreement. *See In re Gardens Regional Hospital and Medical Center, Inc*., 569 B.R. 788, 797 (Bankr. C.D. Cal. 2017).

1. The Provider Agreements Are Not Contracts Because They Impose No Duties On The DHCS.

The DHCS argues that the Provider Agreements are contracts because they impose duties on both the Debtors and the DHCS. Supplemental Objection, at 12, line 26-at 13, line 2. However, the Provider Agreements, despite 40 numbered paragraphs, do not impose any obligations on the DHCS, and certainly do not contain language stating that the DHCS has any obligation to pay for medical services. *See, e.g*., Supplemental Objection, at 14, lines 8-28 (listing obligations imposed on the Provider without listing a single obligation imposed on the DHCS). This is not surprising, as the DHCS's obligation to pay a Medi-Cal provider such as the Hospitals arises not from the Provider Agreements, but rather from federal and state law. 42 U. S. C. §1396a(a)(30)(A); *see generally Armstrong v. Exceptional Child Ctr., Inc*., 135 S. Ct. 1387-88 (2015); *Orthopaedic Hospital v. Belshe*, 103 F.3d 1491 (9th Cir. 1997).

The DHCS argues that the Provider Agreements are contracts, at least in part, because of duties imposed on the parties by "applicable law." Supplemental Objection, at 15, line 2. However, a document that requires parties to comply with pre-existing legal obligations does not provide consideration sufficient to create a contract: "[A]n agreement to comply with applicable law is a gratuitous promise which does not provide the consideration necessary to make a contract enforceable." *In re Gardens Regional Hospital and Medical Center, Inc*., 569 B.R. 788, 797 (Bankr. C.D. Cal. 2017) (citing and quoting *Auerbach v. Great W. Bank*, 74 Cal. App. 4th 1172, 1185, 88 Cal. Rptr. 2d 718, 727 (Cal. Ct. App. 1999) ("In contractual parlance, for example, doing or promising to do something one is already legally bound to do cannot constitute the consideration needed to support a binding contract.")); *see, e.g*., *United States v. Travelers Indem. Co.,* 802 F.2d

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1164, 1167 (9th Cir. 1986) ("Although the rule has been subject to criticism . . . performance of a preexisting legal duty is not sufficient consideration."). The plain text of the Provider Agreements reveal no obligations imposed on the DHCS by the terms of the Provider Agreement, and therefore, the Provider Agreement is not a contract. Thus, DHCS's argument should be rejected.

2. The DHCS Objections Ignore Controlling Ninth Circuit Precedent That Provider Agreements Are Not Contracts.

The DHCS correctly notes the similarities between Medicare Provider Agreements and the Provider Agreements. However, the DHCS's argument by analogy is conclusory, and merely recites non-binding precedent that has found that Medicare Provider Agreements are contracts. However, in the vast majority of those cases the issue was not disputed by the debtor and the findings are either *dicta* or not well analyzed because of this lack of opposition.

Substantive analysis of precedent vindicates the Debtors' position. In fact, the Ninth Circuit (in a decision the DHCS ignored) expressly held that Medicare Provider Agreements, and by extension, the Medi-Cal Provider Agreements, do not create a contractual relationship:

> We have, on occasion, stated that providers and others have contracts with the government in this area, **but our decisions have turned on the regulatory regime rather than on contract principles**. […] As the Eleventh Circuit Court of Appeals held when hospitals complained of legislative impairment of their contract rights in this area because they had agreements with the Secretary: 'Upon joining the Medicare program, however, **the hospitals received a statutory entitlement, not a contract right**."

PAMC, Ltd. v. Sebelius, 747 F.3d 1214, 1221 (9th Cir. 2014) (emphasis added) (quoting *Memorial Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983)).

Previously, but consistently with its decision in *PAMC*, the Ninth Circuit held that the Medi-Cal Provider Agreements create a statutory entitlement, rather than a contractual relationship when it found that Medi-Cal was statutory and did not implicate "government contracts" or "contracting with the state:"

> Participation in the Medi-Cal program entitles [a provider] to reimbursement for treating patients who receive MediCal benefits; **it does not involve bidding on government contracts**. . . . Accordingly, we must conclude that DHCS's action **does not deprive Guzman of his interest in contracting with the state**.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

Guzman v. Shewry, 552 F.3d 941, 946 (9th Cir. 2008) (emphasis added).

These decisions of the Ninth Circuit are consistent with the vast majority of cases to have addressed the issue outside of bankruptcy cases. *See, e.g., Hollander v. Brezenoff*, 787 F.2d 834 (2d Cir. 1986) (characterizing the Medicare relationship with providers as a "statutory business relationship"); *U.S. ex rel. Acad. Health Ctr., Inc. v. Hyperion Foundation, Inc.*, 2014 U.S. Dist. LEXIS 93185 (S.D. Miss., July 9, 2014) (holding that Provider Agreements are not contracts); *U.S. ex rel. Roberts v. Aging Care Home Health, Inc.,* 474 F. Supp. 2d 810 (W.D. La. 2007) ("Medicare Provider Agreements create statutory, not contractual, rights."); *Maximum Care Home Health Agency v. HCFA*, No. 3-97-CV-1451-R, 1998 WL 901642, at *5 (N.D. Tex. Apr. 14, 1998) ("[A] Medicare service provider agreement is not a contact in the traditional sense. It is a statutory entitlement created by the Medicare Act."); *Greater Dallas Homecare Alliance v. United States*, 10 F. Supp.2d. 638, 647 (N.D. Tex 1998) ("Plaintiffs argue that the Medicare participation agreements between [HCFA] and the [health care providers] are essentially contracts. The court disagrees and finds that the participation agreements are not contracts, for the right to receive payments under the Medicare Act is a manifestation of government policy and, as such, is a statutory rather than a contractual right."); *Homecare Ass'n of America Inc. v. United States*, 1998 U.S. Dist. Lexis 20515 (W.D. Okla. Aug., 1998) (holding that no contractual obligation existed between government and provider of Medicare services).

3. If The Provider Agreements Are Not Contracts Outside Of Bankruptcy They Do Not Become Contracts In A Bankruptcy Case.

That Provider Agreements are not contracts outside of bankruptcy resolves the issue of whether they are executory contracts inside of bankruptcy. The Bankruptcy Code does not define what is a contract for its purposes, *In re Frontier Properties, Inc.,* 979 F.2d 1358 (9th Cir. 1992) ("The [bankruptcy] code does not define 'executory contract.'"), and, therefore, the Court should look to applicable non-bankruptcy law to determine what is a contract in bankruptcy. *See, e.g., Butner v. United States*, 440 U.S. 48 (1979) (noting that Congress has "generally left the determination of property rights in the assets of a bankrupt's estate" to applicable non-bankruptcy law). Moreover, to the extent the argument that an agreement could be a contract in bankruptcy

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

even though it is only "contractual in nature" outside of bankruptcy ever had any validity, a recent Supreme Court decision makes it clear that the assertion that the Provider Agreement could be a contract inside of bankruptcy but not outside of bankruptcy cannot survive even cursory scrutiny. The Supreme Court has recently held that "[b]ecause 'contract' is 'neither a defined nor a specialized bankruptcy term … [i]t means in the [Bankruptcy] Code what it means in contract law outside bankruptcy." *Mission Prods. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652 (May 20, 2019). The Supreme Court recognizes that a document which is not a contract outside of bankruptcy cannot become a contract for bankruptcy case purposes.

Importantly, in federal litigation in this district, even the United States has successfully argued that the Medicare Provider Agreement is not a contract. For example, in 2005 in litigation in this district the United States argued:

> Provider Agreements referenced by defendants are one page documents that do no more than notify providers of the statutory and regulatory provisions of the Medicare program and do not in themselves convert the government's statutory and common law remedies into contractual ones. Under those Agreements, providers "agree[] to conform to the provisions of … the Social Security Act and applicable provisions in [the Code of Federal Regulations]." . . . The Agreements impose no duties upon the United States or the Department of Health and Human Services. … Importantly, a Provider Agreement imposes no additional duties upon a provider that are not also embodied in the Social Security Act and regulations. Any "breach" of the Agreement by a provider would necessarily be a violation of the Social Security Act and/or the regulations because to determine what duties the provider had breached, one would have to turn to the statute and the regulations.

United States' Sur-Reply to Tenant's Reply to its Motion for Summary Adjudication (Statute of Limitations), at 2, *United States v. Tenant Healthcare Corp.*, No. CV-03-206, 2005 WL 3784642 (C.D. Cal. Dec. 22, 2005) (internal citations omitted).

The United States regularly argues that the Medicare Provider Agreement is not a contract nationally as well. *Southeast Arkansas Hospice, Inc. v. Sebelius*, 1 Fed. Supp. 3d 915 (E.D. Ark. 2014) ("[T]he Secretary [of the United States Department of Health and Human Services] argues first that the provider agreement is a statutory entitlement and not a contract. … The Secretary cites several cases in this area as to Medicare provider agreements, all of which support the Secretary's position that the agreement with SEARK is not a contract. …. The weight of authority supports a

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

finding that the provider agreement is not a contract."); Government Parties' Reply in Further Support of their Motion for Partial Summary Judgment at 2, 4, *United States v. Malik*, No. 12-1234, 2013 WL 3948074 (D.D.C. June 13, 2013) ("The overwhelming weight of authority rejects any notion that providers participating in Government Health Care Programs have contractual relationships with them. Although provider enrollment applications and materials are often referred to as "agreements," these materials do not establish a contractual relationship -- instead providers' rights to reimbursement are statutory in nature. … In the context of the Medicare program, the Medicare statute requires providers to enter into an agreement, commonly referred to as a provider agreement, with the Secretary of HHS in order to receive Medicare reimbursement. While the provider "agreement" is a condition for reimbursement, it does not establish a contractual relationship between providers and the United States.").

In addition to the Ninth Circuit law that plainly defeats DHCS's argument, the Ninth Circuit's reasoning—differentiating between a true contract right and a statutory right implicating an election by a private party to take on statutory burdens and benefits from the government—exposes the flaw in the DHCS's stance that because the "relationship between a Medi-Cal provider and the DHCS is contractual in nature," that there must be an actual § 365 contract. Supplemental Objection, at 14, lines 4-7. Much like the concession in *PAMC* by the Ninth Circuit that courts frequently describe the Medicare (and by analogy, Medi-Cal) Program as "contractual," although it is not a true contract, it is similarly true that courts refer to the Medi-Cal relationship as "contractual in nature," when, in fact, the Medi-Cal Provider Agreements are not substantively contractual, but are statutory. Just because "legislation [particularly that which is] enacted pursuant to the spending power is much in the nature of a contract" between a person and his government and/or a beneficiary of the law, does not mean the legislation is a "contract" under § 365. *See generally Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 2, 101 S. Ct. 1531, 1532, 67 L. Ed. 2d 694 (1981). Therefore, courts (like the Ninth Circuit) acknowledge that though "rights and liabilities [that] have been called 'contractual in nature' [because they derive from] 'a definite statutory status or relationship which is in essence contractual' are not truly contractual." *Nieves v. Hess Oil Virgin Islands Corp.*, 819 F.2d 1237, 1254–55 (3d Cir. 1987) (emphasis added) (citing

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

McAllister v. Bd. of Education, 79 N.J. Super. 249, 191 A.2d 212 (1963), aff'd, 42 N.J. 56, 198 A.2d 765 (1964)); *cf. Tatum v. RJR Pension Inv. Comm.*, 761 F.3d 346, 363 n. 11 (4th Cir. 2014) (analyzing dispute between employer and employee regarding retirement plan and holding that "ERISA—not a contract—governs the parties' relationship, and expressly imposes fiduciary—not contractual—duties."). The Debtors' and the DHCS's relationship is underpinned by statute - not a contract - and § 365 does not apply.

B. The Medi-Cal Provider Agreements Are Property Of The Debtors' Estates Which Can Be Sold Through § 363.

Although courts have treated provider agreements as executory contracts, the issue was not disputed in the vast majority of cases. Bankruptcy courts which have actually addressed this issue in a meaningful way have concluded that Provider Agreements are not contracts, and therefore can be sold under § 363. For example, the decision in *In re BDK Health Mgmt., Inc*., Case Nos. 98-609-B1, *Order Authorizing Sale of Assets Out Of The Ordinary Course of Business*, 1998 Bankr. LEXIS 2031 (Bankr. M.D. Fla., Nov. 16, 1998), is directly on point, well-reasoned and persuasive, and concludes that provider agreements generally are not executory contracts. *See also In re Kings Terrace Nursing Home and Health Related Facility*, 1995 WL 65531, *7-8 (Bankr. S.D.N.Y. Jan. 27, 1995) (Medicaid relationship is statutory relationship, not contractual relationship, despite existence of provider agreement.), *aff'd*, 184 B.R. 200 (S.D.N.Y. 1995).

The court's reasoning in *BDK* dealt with Medicare Provider Agreements, but (as the DHCS Objections admit) its reasoning is equally applicable to the Medi-Cal Provider Agreements. The court noted that the Provider Agreements imposed no obligations and conferred no benefits on the debtor or the government other than establishing that the debtor was entitled to operate and be reimbursed in accordance with the applicable Medicare statutes and regulations. Like the Ninth Circuit in *PAMC*, the court found that Provider Agreements created "statutory entitlement" relationships rather than contractual relationships. There is very little to distinguish the Medicare Provider Agreement from the Medi-Cal Provider Agreement in these aspects, and should the Debtors seek to sell the Provider Agreements as licenses, the result should be that the Provider Agreements are treated as licenses rather than as contracts.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Although the DHCS argues at length about the Debtors' estates having no "property rights" in the Provider Agreements (without focusing on bankruptcy law, Supplemental Objection, at 19), this misses the point given the broad definition of "property of the estate" under the under § 541(a). Section 541(a) broadly defines "property" of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case" - a far more expansive definition than the one urged by the DHCS and applied by the non-bankruptcy cases it cites.[3]

In a *bankruptcy* context, courts have held that interests such as the Medi-Cal Provider Agreements are "property" under § 541(a). For instance, in dealing with licenses issued by the Federal Communications Commission, courts have held that debtors can sell licenses even if they were not an "owned asset" or a "vested property interest." *Stephens Industries, Inc. vs. McClung*, 789 F. 2d. 386 (6th Cir. 1986) (court held that the broadcast license was not an owned asset or a vested property interest that could be subject to a mortgage, lien, pledge, attachment, seizure or similar right but authorized the § 363 sale of all assets of the debtor, including whatever rights attached to the license); *In re Fugazy Express, Inc*., 124 B.R. 426 (S.D.N.Y. 1991) (analyzing the property of the estate question and concluding that § 541 includes any conceivable tangible or intangible property, including licenses issued by governmental authority); *In re Smith*, 94 B.R. 220 (Bankr. M.D. Ga. 1988) (holding that license was property of the estate). This is consistent with Ninth Circuit precedent holding that "[g]overnment licenses, as a general rule, are considered to be 'general intangibles' under the Uniform Commercial Code, 'i.e., personal property interests in which security interests may be perfected.'" *Mlq Investors, L.P., v. Pac. Quadracasting, Inc.,* 146 F.3d 746, 749 (9th Cir. 1998) (quoting *In re Ridgely Communications, Inc.*, 139 B.R. 374, 379 (Bankr. D. Md. 1992)).

Here, the Court should find that the Provider Agreements are licenses, and are therefore property of the bankruptcy estate which can be sold pursuant to § 363. *See, e.g., In re Re Tak*

[3] The DHCS argues that the Debtors have no property interest in the Medi-Cal Provider Agreement, which is inconsistent with its argument that the Provider Agreement is a contract. There is no dispute that an executory contract is property of a debtor's estate, and DHCS argues strongly that the Provider Agreement is such a contract and is subject to assumption. DHCS does not explain how the Debtors could have contract rights but not be any property rights in that alleged contract.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Communications, 985 F.2d 916 (7th Cir. 1993); *In re Fugazy Express, Inc*., 124 B.R. 426 (S.D.N.Y. 1991); *In re Smith*, 94 B.R. 220 (Bankr. M.D. Ga. 1988); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes). This is consistent with the general rule that all of a debtor's property, including all legal and equitable interests, becomes property of the bankruptcy estate. *See, e.g*., 11 U.S.C. § 541; *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642 (1992); *United States v. Whiting Pools, Inc*., 462 U.S. 198, 203-05 (1983).

Courts have recognized that providers have a property interest in the statutory entitlement to bill and be paid by the Medi-Cal Program. Controlling Ninth Circuit precedent holds that "a person has a property interest in a benefit if they have 'a legitimate claim of entitlement to it' which interest may be "created by 'rules or understandings' from independent sources, such as statutes, regulations, and ordinances, or express or implied contracts.'" *Maynard v. Bonta*, No. CV 02-06539, 2003 U.S. Dist. LEXIS 16201 at **36-37 (C.D. Cal. Aug. 29, 2003) (citing *Board of Regents v. Roth*, 408 U.S. 564, 577; *Erickson,* 67 F.3d at 862; *Orloff v. Cleland*, 708 F.2d 372, 377 (9th Cir. 1983)). Although the DHCS argues that providers like the Debtors are not the intended beneficiaries of the Provider Agreement, that is a red-herring. Parties can enter into agreements for the benefits of third parties and that does not extinguish the property rights of the parties to the agreement. In any event, federal law requires that state Medicaid plans "provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the . . . provider of service," 42 U.S.C. § 1396a(a)(37)(B). The Debtors have a property interest in the Provider Agreements because they create a legitimate claim of entitlement to payment that derives from statute and regulation (although not from a contract). These rulings are totally consistent with the position that the Provider Agreement is merely a license creating a statutory entitlement for medical providers to bill the Medi-Cal Program.

C. The Medi-Cal Provider Agreement Can Be Sold Free And Clear Of Successor Liability.

Section 363(f) allows the Debtors to sell the Medi-Cal Provider Agreements "free and clear of ***any interest*** in such property," including the "interest" of successor liability. Many circuit courts

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

of appeals and lower courts have applied an expansive interpretation to include not only *in rem* interests in property, but also other obligations that may "arise from the property being sold." *See, e.g., In re Grumman Olson Industries. Inc*., 467 B.R. 694, 702-3 (S.D.N.Y 2012); *see also United Mine Workers of America 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996) (coal mine operators could sell their assets free and clear of their obligations to a benefits plan and fund under the Coal Act); *PBBPC, Inc. v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. B.A.P. 2013) (the right of the Commonwealth of Massachusetts to treat a purchaser of substantially all of the assets of chapter 11 debtor as "successor employer" to which debtor's experience rating could be imputed to determine purchaser's unemployment insurance contribution fell within "any interest," of which debtor's assets could be sold free and clear); *In re Tougher Industries*, 2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013) (the right of the New York State Department of Labor to use the debtor's experience rating to access the buyer's tax liability as successor to the Debtor was "interest" in property, of which debtor's assets could be sold free and clear); *WBO P'ship v. Virginia Dept. of Medical Assistance Servs. (In re WBO P'ship)*, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in §363(f)).[4]

The DHCS argues that the Provider Agreement cannot be sold because the Debtors cannot satisfy any of the provisions under § 363(f). However, the DHCS confuses what is the "property" and what is the "interest" in its argument. The DHCS argues that it "cannot be compelled to accept a money satisfaction in exchange for its rights to prevent a sale of the Debtors' Medi-Cal provider status or Debtors' benefits, duties and obligations under the Agreements." Supplemental Objection, at 22, lines 11-14. However, the issue the Court must resolve is whether the financial obligations which the DHCS argues must be conveyed along with the Provider Agreement to the Buyer are "interests" in the property (the Medi-Cal Provider Agreement) which can be satisfied by the payment of money. Here, where the DHCS argues that it must be paid money to cure the "defaults," it is hard to fathom how this provision of § 363 is not satisfied.

[4] In addition, the Bankruptcy Code preempts state law on successor liability. *Myers v. United States*, 297 B.R. 774 (S.D. Cal. 2003). Though as the decisions herein demonstrate, courts allow assets to be sold free and clear of successor liability under state or federal law.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

If the Debtors sell the Provider Agreements to SGM, the sale will cut off any rights of the DHCS to setoff obligations. *Folger Adam Sec., Inc. v DeMatteis/Macgregor, JV,* 209 F.3d 252, 263 (3d Cir. 2000) (holding that setoff rights under § 553 are subject to § 363 and are therefore extinguished by "free and clear" sale). The Debtors are mindful that some courts (but not this Court) have held that recoupment, as a defense rather than a claim, is not extinguished by a sale under § 363. *Id*. at 261. However, even if the Court were to find that recoupment survives the sale, the Court's order should state that the DHCS's recoupment rights against SGM, if any, could be exercised only after the DHCS recouped from any payments due to the Debtors from Medi-Cal, next against funds held by the Debtors if the funds were generated by past interim Medi-Cal payments, and then against any sale proceeds generated by the sale of the Provider Agreement. *In re Vitalsigns Homecare, Inc*., 396 B.R. 232 (Bankr. D. Mass. 2008).

D. Even If The Medi-Cal Provider Agreement Is A Contract, The Debtors Do Not Have To Pay The HQAF Fees As A Cure.

Section 365(b)(1)(A) only requires a debtor to cure a "default *in* an executory contract," not all claims of a creditor that has a contract. The statutory requirement that a chapter 11 debtor cure any existing defaults as a condition to assuming an executory contract is intended to "insure that a contracting party is made whole before a court can force the party to continue performing with a bankrupt debtor," and, it is well-established that a nondebtor "party to an executory contract must be paid all amounts due him **under the contract** before the contract may be assumed." *Matter of Superior Toy & Manufacturing Company, Inc*., 78 F.3d 1169, 1174 (7th Cir. 1996) (emphasis added). However, the "flip side" of that statement is that a debtor does not have to pay amounts owed to a creditor which are not due under a contract to assume that contract in bankruptcy. *In re UAL Corp.*, 635 F.3d 312, 316 (7th Cir. 2011), as amended on denial of reh'g (Apr. 13, 2010) (agreeing that "the right to cure does not arise out of a claim. It arises out of a contract."); *In re Sigel & Co., Ltd.*, 923 F.2d 142, 145 (9th Cir. 1991) ("[u]nder section 365(b), the trustee may assume executory contracts and unexpired leases only if he cures the defaults—**but the cure need address only the individual event of default**, thereby repealing [only] the [specific] contractual consequences.") (quoting *In re Taddeo*, 685 F.2d 24, 27 (2d Cir.1982); *In re Rowland*, 292 B.R.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

815, 818 (Bankr. E.D. Pa. 2003) ("The weight of authority . . .holds that § 365(b)(1) . . . does not provide an independent right of recovery. . .to any other component of a cure amount. . . Rather, claims relative to amounts necessary to cure a [contract] default must be traced to and flow from the relevant . . . agreement.").

Here, the Debtors would owe the HQAF Fees under California law without regard to having a Medi-Cal Provider Agreement. The DHCS's argument ignores that a hospital that does not have a Medi-Cal provider agreement, but is a private hospital licensed under California Health and Safety Code § 1250(a) (that is, is a general acute care hospital), and is not exempt from paying the HQAF fees (such as a rural hospital) is obligated to pay the fees due under the HQAF even though such a hospital receives no payments under the HQAF. The obligation to pay the fees is based on licensure and not on Medi-Cal participation. The relevant statute is California Welfare and Institutions Code § 14169.52. This statute imposes the fee "on each general acute care hospital that is not an exempt facility." "General acute care hospital" is defined in California Welfare and Institutions Code § 14169.51(q) to be "any hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code." This would include any licensed acute care hospital regardless of whether it participated in Medi-Cal. Thus, the HQAF Fees allegedly owed by the Debtor to the DHCS are not due under the Medi-Cal Provider Agreement (because hospitals with licenses but without a provider agreement must still pay the fees). Allowing the DHCS to claim statutory fees as an administrative cure claim subverts the priority of the Code, and, thus, DHCS's arguments should be overruled.

IV.

CONCLUSION

For all the reasons stated above, the Court should overrule the DHCS's Objections, and enter an order enforcing the sale order and permitting the sale of the Debtors' interest in the Medi-Cal Provider Agreements "free and clear" of any interests of the DHCS, including but not limited to the HQAF obligations.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Dated: September 18, 2019

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

By /s/*Samuel R. Maizel*
SAMUEL R. MAIZEL

Attorneys for Chapter 11 Debtors and Debtors In Possession

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit L

Exhibit L

Docket #3146 Date Filed: 9/26/2019

FOR PUBLICATION

FILED & ENTERED

SEP 26 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

MEMORANDUM OF DECISION AUTHORIZING DEBTORS TO SELL MEDI-CAL PROVIDER AGREEMENTS, FREE AND CLEAR OF INTERESTS ASSERTED BY THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES, PURSUANT TO § 363(F)(5)

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.

Date: September 25, 2019

Time: 10:00 a.m.

Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

1820151190926000000000002

At issue is whether Medi-Cal Provider Agreements (the "Provider Agreements") entered into between four hospitals (the "Hospitals") and the California Department of Health Care Services (the "DHCS") are executory contracts which must be transferred pursuant to § 365 of the Bankruptcy Code, or statutory entitlements that may be transferred free and clear of successor liability under § 363 of the Bankruptcy Code.[1] If the Provider Agreements are executory contracts, the DHCS may be entitled to receive payments potentially in excess of $50 million in connection with the transfer of the Provider Agreements to the purchaser of the Hospitals. By contrast, if the Provider Agreements are statutory entitlements, they can be transferred to the purchaser free and clear of claims and interests under § 363, meaning that the DHCS would receive no payments in connection with the transfer. For the reasons set forth below, the Court finds that the Provider Agreements are statutory entitlements.[2]

---

[1] Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

[2] The Court considered the following papers in adjudicating this matter:

1) Debtors' Memorandum in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of all Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C) Granting Related Relief [Doc. No. 2115] (the "Sale Motion");
2) Creditor California Department of Health Care Services's Objection to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 1879];
3) 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 [Doc. No. 3043];
4) Official Committee of Unsecured Creditors' Reply to Creditor California Department of Health Care Services's Supplemental Objection to Sale [Doc. No. 3093];
5) Debtors' Reply to California Department of Health Care Services Objection to Debtors' Sale of Assets to Strategic Global Management [Doc. No. 3095];
    a) Objection to Declaration of Hanh Vo in Support of 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 [Doc. No. 3115];
    b) Declaration of Anita Chou in Support of Debtors' Reply to the California Department of Health Care Services' Objection to Debtors' Sale of Assets to Strategic Global Management [Doc. No. 3112]; and
    c) Notice of Debtors' Request to Bifurcate Hearing Regarding California Department of Health Care Services' Objection to Debtors' Sale of Assets to Strategic Global Management [Doc. No. 3113].

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases.[3]

On May 2, 2019, the Court entered an order approving the sale of substantially all of the assets of four of the Debtors' hospitals—St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, and Seton Medical Center (collectively, the "Hospitals")—to Strategic Global Management, Inc. ("SGM").[4]

Each of the Hospitals has executed a Provider Agreement with DHCS. 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.[5]

Pursuant to Cal. Welf. & Inst. Code § 14169.52(a), each of the Hospitals is required to pay a quarterly Hospital Quality Assurance Fee (an "HQA Fee") to the DHCS, which is assessed regardless of whether the hospital participates in the Medi-Cal Program. *See* Cal. Welf. & Inst. Code § 14169.52(a) (imposing the HQA Fee upon "each general acute care hospital that is not an exempt facility"). As this Court has previously explained, the "HQA Fee allows California to obtain more healthcare funds from the federal government, which generally matches state Medi–Cal contributions dollar-for-dollar." *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 569 B.R. 788, 791 (Bankr. C.D. Cal. 2017), *aff'd,* No. 2:16-BK-17463-ER, 2018 WL 1354334 (B.A.P. 9th Cir. Mar. 12, 2018) ("*Gardens II*").

According to the DHCS, the Debtors are liable for approximately $30 million in HQA Fees attributable to the Hospitals. DHCS asserts that the Provider Agreements associated with each Hospital cannot be transferred to SGM unless the Debtors first assume the Provider Agreements under § 365 of the Bankruptcy Code. In the process of assuming the Provider Agreements, the Debtors would be required to cure the unpaid HQA Fees, or provide adequate assurance that the unpaid HQA Fees would be promptly cured.

The Debtors receive Medi-Cal fee-for-service payments on account of medical services provided to Medi-Cal beneficiaries by the Hospitals. DHCS asserts that the Debtors are liable for approximately $25 million in Medi-Cal fee-for-service overpayments, and that such overpayments must also be cured in connection with the assumption of the Provider Agreements. The Debtors dispute the validity of the audit that resulted in the calculation of the overpayments.

The Debtors contend that the Provider Agreements are not contracts and that it is therefore unnecessary for the Debtors to assume the Provider Agreements under § 365 in order to transfer the agreements to SGM. According to the Debtors, the Provider Agreements are a statutory entitlement to participate in the Medi-Cal program and should be treated as licenses that can be sold, free and clear of claims, interests, and encumbrances, pursuant to § 363(f). In support of the contention that the Provider Agreements are not contracts, Debtors argue that the Provider Agreements do not impose any obligations upon the DHCS. Debtors maintain that the only obligations existing under the Provider Agreements are those that are already imposed under applicable law, and that an agreement to comply with applicable law "is a gratuitous promise

[3] Doc. No. 17.
[4] Doc. No. 2306 (the "SGM Sale Order").
[5] APA at ¶ 8.7.

which does not provide the consideration necessary to make a contract enforceable." *Gardens II*, 569 B.R. at 797.

The Official Committee of Unsecured Creditors (the "Committee") agrees with the Debtors that the Provider Agreements are not contracts. Like the Debtors, the Committee takes the position that the Provider Agreements are assets of the Debtors' respective estates that can be sold free and clear of all interests pursuant to § 363(f).

II. Discussion

If the Provider Agreements are executory contracts, they can be transferred to SGM only if they are first assumed by the Debtors. To assume an executory contract, the Debtors must either cure all defaults under the contract, or provide adequate assurance that the defaults will be cured promptly. § 365(b).

An executory contract is "a contract that neither party has finished performing." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1657, 203 L. Ed. 2d 876 (2019). Of course, an agreement that is not a contract can never qualify as an executory contract.

Terms not defined in the Bankruptcy Code have the meaning accorded to such terms under nonbankruptcy law. *See Mission Prod. Holdings,* 139 S.Ct. at 1661 ("And 'breach' is neither a defined nor a specialized bankruptcy term. It means in the Code what it means in contract law outside bankruptcy."). The Bankruptcy Code does not define the term "contract," so the term has the same meaning under § 365 of the Bankruptcy Code as it does under non-bankruptcy law. As the Supreme Court has explained, "[p]roperty interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (1979).

A. The Provider Agreements Are Not Contracts

The first issue the Court must confront, then, is whether the Provider Agreements are contracts. The Court finds that they are not.[6]

---

[6] In *Gardens II*, the Court found that under the principle of equitable recoupment, DHCS could withhold Medi-Cal and supplemental quality assurance payments owed to a debtor, for the purpose of recovering unpaid hospital quality assurance fees owed by the debtor. *Gardens II* did not decide whether a Medi-Cal Provider Agreement was a contract or a statutory entitlement akin to a license, as the issue did not affect the outcome of the decision:

> The Court finds that, regardless of whether the Provider Agreement is considered a license or contract, the Debtor's HQA Fee liability and entitlement to Medi-Cal Payments would still arise from the same transaction or occurrence…. As discussed previously, the Debtor's acknowledgment in the Provider Agreement that unpaid HQA Fees could be withheld from its Medi-Cal Payments establishes the necessary logical relationship between the Debtor's fee liabilities and its payment entitlements. That logical relationship exists whether the Provider Agreement is classified as a license or a contract.

Gardens II, 569 B.R. at 799.

The Court's determination of whether the Provider Agreements are contracts is informed by decisions involving Medicare Provider Agreements. For purposes of this issue, there are no meaningful differences between the Provider Agreements and a Medicare Provider Agreement. Both types of agreements allow hospitals to obtain reimbursement from the government for providing healthcare services. In both cases, the hospitals' reimbursement entitlement is dictated by the Medicare statute and the regulations promulgated thereunder.[7]

In *PAMC, Ltd. v. Sebelius*, 747 F.3d 1214, 1221 (9th Cir. 2014), the Ninth Circuit declined to apply the contract doctrine of "substantial compliance" to a Medicare Provider Agreement. In that case, PAMC, a hospital, appealed the decision of the Secretary of the Department of Health and Human Services to reduce the reimbursements for which PAMC was eligible. *Id.* at 1215–16. PAMC's reimbursements had been reduced because it had submitted certain required data 28 minutes late. *Id.* at 1216. In challenging the Secretary's decision to reduce its reimbursement eligibility, PAMC argued, among other things, that it had substantially complied with the terms of its Medicare Provider Agreement. *Id.* at 1220. The Ninth Circuit rejected PAMC's attempt to avail itself of the contract doctrine of "substantial compliance":

> [T]he whole notion of importing contract doctrines into an area that is a complex statutory and regulatory scheme is problematic. We have, on occasion, stated that providers and others have contracts with the government in this area, but our decisions have turned on the regulatory regime rather than on contract principles. *See, e.g., United States v. Bourseau,* 531 F.3d 1159, 1162, 1169–70 (9th Cir.2008); *Pac. Coast Med. Enters. v. Harris,* 633 F.2d 123, 125 n. 1, 133–35 (9th Cir.1980). As the Eleventh Circuit Court of Appeals held when hospitals complained of legislative impairment of their contract rights in this area because they had agreements with the Secretary: "Upon joining the Medicare program, however, the hospitals received a statutory entitlement, not a contractual right." *Mem'l Hosp. v. Heckler,* 706 F.2d 1130, 1136 (11th Cir.1983); *see also Bennett v. Ky. Dep't of Educ.,* 470 U.S. 656, 669, 105 S.Ct. 1544, 1552, 84 L.Ed.2d 590 (1985) (stating that while states had "grant agreements" with the federal government and those had a "contractual aspect," the program should not be viewed like a "bilateral contract" and should not "be construed most strongly against the drafter" (internal quotation marks omitted)); *cf. Sebelius v. Auburn Reg'l Med. Ctr.,* —— U.S. ——, ——, 133 S.Ct. 817, 828–29, 184 L.Ed.2d 627 (2013) (declining to apply equitable tolling principles to time set by Secretary for appealing to the Board); *Kaiser Found.*

In support of its argument that the Provider Agreements are executory contracts, DHCS cites the observation made in *Gardens II* that Medicare Provider Agreements "are similar in many respects to … [a] Medi-Cal Provider Agreement." *Gardens II*, 569 B.R. at 799 n.12. DHCS then cites decisions holding that Medicare Provider Agreements are executory contracts. As discussed in greater detail below, the Court does not find the decisions cited by DHCS to be persuasive, because they reached the conclusion that Medicare Provider Agreements are executory contracts without meaningful analysis.

[7] Because the Medi-Cal program is funded in part by federal funds, reimbursement entitlements under Medi-Cal must be consistent with the provisions of the Medicare statute. *See generally* 42 U.S.C. § 1396a (setting forth requirements applicable to state medical assistance plans such as Medi-Cal).

> *Hosps.,* 649 F.3d at 1160 (declining to apply excusable neglect equitable analysis to Board's dismissal of case for "failure to timely submit a position paper").

PAMC, Ltd. v. Sebelius, 747 F.3d 1214, 1221 (9th Cir. 2014).

Other courts have been even more explicit in stating that a Medicare Provider Agreement is not a contract. In *Mem'l Hosp. v. Heckler*, cited with approval in *PAMC*, hospitals argued that new legislation reducing their Medicare reimbursement entitlements constituted "an unconstitutional taking of their property without just compensation in violation of the fifth amendment, because it would abrogate a vested contractual right to Medicare reimbursement." *Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983). The *Heckler* court squarely rejected the hospitals' contention that their Medicare Provider Agreements were contracts: "Upon joining the Medicare program, however, the hospitals received a statutory entitlement, not a contractual right." *Heckler*, 706 F.2d at 1136.

Significantly, the *Heckler* court observed that "[c]ourts have upheld retroactive adjustments in the Medicare reimbursement system." *Id.* It emphasized that such retroactive adjustments were permissible precisely because Medicare Provider Agreements were not contracts. *Id.* A similar result was reached in *Germantown Hosp. & Med. Ctr. v. Heckler*, 590 F. Supp. 24, 30–31 (E.D. Pa. 1983), *aff'd sub nom. Germantown Hosp. & Med. Ctr. v. Schweiker*, 738 F.2d 631 (3d Cir. 1984), in which the court held:

> There is no contractual obligation requiring [the Department of Health and Human Services] to provide Medicare reimbursement. Rather, upon joining the Medicare program, providers gain a statutory entitlement to reimbursement. Thus the amount of reimbursement is governed not by contract but by statute; specifically the Medicare Act's "reasonable cost" provisions.

Germantown, 590 F.Supp. at 30–31. *See also Greater Dallas Home Care All. v. United States*, 10 F. Supp. 2d 638, 647 (N.D. Tex. 1998) ("Plaintiffs argue that the Medicare participation agreements … are essentially contracts. The Court disagrees and finds that the participation agreements are not contracts, for the right to receive payments under the Medicare Act is a manifestation of Government policy and, as such, is a statutory rather than a contractual right.").

Similarly, in *Guzman v. Shewry*, the Ninth Circuit held that a Medi-Cal Provider Agreement was not a contract. 552 F.3d 941 (9th Cir. 2009). In *Guzman*, a physician sought a preliminary injunction to prevent the DHCS from temporarily suspending him from the Medi-Cal program. *Id.* at 946. Among other things, the physician argued that because his suspension deprived him of the ability to receive reimbursement for treating Medi-Cal patients, he had been deprived of his right to contract with the state. *Id.* at 954. Rejecting this argument, the court held that "[p]articipation in the Medi-Cal program entitles Guzman to reimbursement for treating patients who receive Medi-Cal benefits; it does not involve bidding on government contracts." *Id.*

In addition, the Provider Agreements lack a key feature found in all contracts—obligations imposed on both parties to the agreements. The Provider Agreements impose no obligations upon the DHCS. The only obligations spoken of in the Provider Agreements pertain to the Debtors. Even these obligations do not constitute consideration for contract purposes, since they

merely restate the Debtors' pre-existing legal obligations.[8] As this Court has previously held, "an agreement to comply with applicable law is a gratuitous promise which does not provide the consideration necessary to make a contract enforceable." *Gardens II*, 569 B.R. at 797.

DHCS cites a number of cases in which courts have held that Medicare Provider Agreements are executory contracts. These authorities are not persuasive, because the issue of whether the provider agreements were executory contracts versus statutory entitlements was not litigated. Instead, the courts simply assumed, without meaningful analysis, that the provider agreements were executory contracts.

For example, in *In re University Medical Center*, 973 F.2d 1065 (3d Cir. 1992), the Third Circuit assumed that a Medicare Provider Agreement was an executory contract, even though the Third Circuit had ruled eight years prior in *Germantown Hosp. & Med. Ctr. v. Schweiker*, 738 F.2d 631, 632 (3d Cir. 1984) that Medicare Provider Agreements are statutory entitlements, not contracts. In *Germantown*, the court rejected the argument that a reduction in Medicare reimbursement rates impaired the contract rights of the Medicare providers. *Id.* The *University Medical Center* decision contained no discussion of *Germantown* and made no attempt to reconcile *Germantown*'s holding that reductions to Medicare reimbursement rates did not amount to a breach of contract. Similarly, in *In re Heffernan Memorial Hospital District*, 192 B.R. 228, 231 n.4 (Bankr. S.D. Cal. 1996), the issue was not litigated and the debtor appeared to concede that the provider agreement was an executory contract. Likewise, in *In re St. Johns Home Health Agency, Inc*., 173 B.R. 238 (Bankr. S.D. Fla. 1994), the debtor conceded that the provider agreement was an executory contract, and the Bankruptcy Court disregarded prior binding Eleventh Circuit precedent rejecting the contention that a provider agreement gave the provider "a vested contractual right to Medicare reimbursement." *Mem'l Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983).

---

[8] DHCS cites a number of provisions within the Provider Agreement that it claims constitute consideration sufficient to render the Provider Agreements contractual in nature. But all of the following the provisions cited by DHCS are restatements of legal obligations imposed upon the Debtors by federal law, federal regulations, state law, or state regulations:

1) Debtors will be subject to the sanctions available to DHCS if they fail to comply with applicable law.
2) To submit a treatment authorization request, the Debtors must use a National Provider Identifier ("NPI") that is appropriately registered and is compliant with all NPI requirements.
3) Debtors cannot engage in conduct inimical to public health, morals, welfare, or safety.
4) Debtors cannot refuse healthcare services based upon race, color, ancestry, marital status, national origin, gender, age, economic status, or physical or mental disability.
5) Only qualified medical personnel may provide healthcare services.
6) Any overpayments must be repaid by the Debtors in accordance with applicable statutes and regulations.
7) Debtors are subject to certain automatic and permissive suspensions and mandatory and permissive exclusions.

B. The Provider Agreements Can Be Sold Free and Clear of Liens, Claims, and Interests Pursuant to § 363(f)(5)

Having found that the Provider Agreements are not contracts and therefore are not subject to assumption and assignment under § 365, the Court must determine whether the Provider Agreements can be sold free and clear of liens, claims, and interests under § 363(f).

Courts have held that interests such as the Provider Agreements constitute "property of the estate" under § 541 that may be sold under § 363. In *Matter of Fugazy Exp., Inc.*, 124 B.R. 426, 430 (S.D.N.Y. 1991), the court held that a license issued by the Federal Communications Commission was property of the estate, notwithstanding a provision within the Federal Communications Act providing that the Act did not create ownership rights in licenses. The holding is consistent with Ninth Circuit precedent stating that "[g]overnment licenses, as a general rule, are considered to be 'general intangibles' under the Uniform Commercial Code, 'i.e., personal property interests in which security interests may be perfected.'" *MLQ Inv'rs, L.P. v. Pac. Quadracasting, Inc.*, 146 F.3d 746, 749 (9th Cir. 1998).

The Court finds that the Provider Agreements are akin to a license issued by a government agency, and therefore that the Provider Agreements may be sold under § 363. The Provider Agreements create a statutory entitlement to bill the Medi-Cal program for providing Medi-Cal services. *See Guzman*, 552 F.3d at 954 (stating that "[p]articipation in the Medi-Cal program entitles [physician] Guzman to reimbursement for treating patients who receive Medi-Cal benefits"). This right to receive reimbursement for providing healthcare services is a property interest.

DHCS contends that the Hospitals hold no property interest in the Provider Agreements and that as a result, the Provider Agreements cannot be sold under § 363. In support of its position, DHCS cites *Erickson v. U.S. ex rel. Dep't of Health & Human Servs.*, 67 F.3d 858, 862 (9th Cir. 1995), in which the court held that a physician convicted of submitting false claims to Medicare did "not possess a property interest in continued participation in Medicare, Medicaid, or the federally-funded state health care programs." *Id.*

DHCS ignores the difference between a property interest in the right to *continue* to participate in Medi-Cal and a property interest in the *existing* right to bill Medi-Cal for providing services. *Erickson* stands for the unremarkable proposition that a provider who engages in criminal conduct has no right to continue as a provider. No one disputes that if the Hospitals violated Medi-Cal statutes or regulations, their right to continue as Medi-Cal Providers could be suspended. But at present, the Provider Agreements are in good standing and the Hospitals have the right to receive reimbursements for providing services to Medi-Cal beneficiaries. It is this right that amounts to a property interest.

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 (collectively, the "Liabilities").[9]

---

[9] The Debtors object to declaration testimony submitted by Hanh Vo with respect to the amount of the Liabilities. As a result of its determination that the Provider Agreements may be sold free and clear of the Liabilities, it is not necessary for the Court to adjudicate the amount of the Liabilities at this time. Because the Court has not considered the Vo declaration in reaching its decision, the Court does not rule upon the Debtors' evidentiary objection. *See Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D.

Section 363(f)(1) provides that a sale of estate property may be "free and clear of any interest in such property of an entity other than the estate" if certain conditions are satisfied. As this Court has previously explained:

> The Bankruptcy Code does not define the phrase "interest in ... property" for purposes of § 363(f). The Third Circuit has held that the phrase "interest in ... property" is "intended to refer to obligations that are connected to, or arise from, the property being sold." *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000). That conclusion is echoed by *Collier on Bankruptcy*, which observes a trend in caselaw "in favor of a broader definition [of the phrase] that encompasses other obligations that may flow from ownership of the property." 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 363.06[1] (16th ed. 2017).
>
> Courts have held that interests in property include monetary obligations arising from the ownership of property, even when those obligations are imposed by statute. For example, in *Mass. Dep't of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. BAP 2013), the court held that taxes assessed by Massachusetts under its unemployment insurance statutes constituted an "interest in ... property." The taxes were computed based on the Debtor's "experience rating," which was determined by the number of employees it had terminated in the past. *Id.* at 862. Because the Debtor had terminated most of its employees prior to selling its assets, its experiencing rating, and corresponding unemployment insurance tax liabilities, were very high. *Id.* The *PBBPC* court held that the experience rating was an interest in property that could be cut off under § 363(f). *Id.* at 869–70. Similarly, in *United Mine Workers of Am. Combined Benefit Fund v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 581, the court held that monetary obligations imposed by the Coal Industry Retiree Health Benefit Act of 1992 constituted an "interest in ... property" within the meaning of § 363(f).

In re Gardens Reg'l Hosp. & Med. Ctr., Inc., 567 B.R. 820, 825–26 (Bankr. C.D. Cal. 2017), *appeal dismissed,* No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018).

The Liabilities are an "interest in property" within the meaning of § 363(f). The Liabilities arise because the Hospitals have elected to exercise their statutory entitlement to provide medical services, and receive reimbursement for providing such services, under the Provider Agreements. As such, the Liabilities are a monetary obligation arising from the ownership of property (the property being the reimbursement rights associated with the Provider Agreements).

The Provider Agreements may be sold free and clear of the Liabilities only if one or more of the conditions specified in § 363(f)(1)–(5) is satisfied. Here, the Court finds that § 363(f)(5) is satisfied. Under § 363(f)(5), property may be sold free and clear of an interest, if the entity holding the interest "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

The interest that DHCS holds in the Provider Agreements is its right to receive payment of the Liabilities. DHCS could be compelled to accept a money satisfaction of its interest in a legal or equitable proceeding. In fact, receiving a money satisfaction is and has been DHCS' objective

---

Cal. 2010) ("Because the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these objections.").

all along. Throughout these cases, DHCS has withheld funds payable to the Hospitals to recover the Liabilities.[10] That DHCS would accept a money satisfaction is apparent in its briefing. DHCS states that the Debtors must "pay the debt through the proceeds of the sale" or "within five days of the closing of the sale," and that the Debtors "must establish and maintain a trust account in the amount of $70 million for 36 months for potential reimbursement to [DHCS] of any Medi-Cal overpayment …."[11]

The case of *In re P.K.R. Convalescent Centers, Inc.*, 189 B.R. 90, 91 (Bankr. E.D. Va. 1995) is directly on point. In *In re PKR Convalescent Centers*, the court approved the sale of a nursing home, free and clear of the interest held by the Virginia Department of Medical Assistance Service (the "DMAS"), pursuant to § 363(f)(5). The interest in question was DMAS' right under Virginia law to recapture, upon the sale of the nursing home, depreciation payments it had previously made to the operators of the nursing home. The court held that DMAS' interest would be extinguished if it received the $1.7 million in depreciation recapture payments it was owed under the statute, and that accordingly, DMAS could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of its interest. *Id.* at 94.

As was the case in *PKR Convalescent Centers*, DHCS' interest in the Provider Agreements would be extinguished if it received the payments it contends it is owed on account of the Liabilities. Consequently, DHCS could be compelled to accept a money satisfaction of its interest. The Provider Agreements may be sold free and clear of DHCS' interest under § 363(f)(5).

The Debtors request that the order on the Motion state that DHCS' recoupment rights against SGM, if any, must be first exercised against payments due to the Debtors from Medi-Cal, then against funds held by the Debtors generated by past interim Medi-Cal payments, and then against any sale proceeds generated by the sale of the Provider Agreement. The issue of the applicability of recoupment subsequent to the sale of the Provider Agreements free and clear of claims and interests has not been sufficiently briefed. The Court declines to decide the issue at present, without prejudice to the ability of interested parties to raise the issue by way of motion.

DHCS requests that the order on the Motion be stayed for 14 days, pursuant to Bankruptcy Rule 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. The sale to SGM is not expected to close until mid-to-late October 2019. Because the Provider Agreements will not be transferred to SGM until the sale closes, the stay imposed by Bankruptcy Rule 6004(h) is not necessary to protect DHCS' right to appeal.

III. Conclusion

Based upon the foregoing, the Debtors are authorized to sell the Provider Agreements to SGM, free and clear of claims, interests, and encumbrances, pursuant to § 363(f)(5). The Debtors shall submit an order consistent with this Memorandum of Decision.

---

[10] DHCS asserts that its withholdings are authorized under the equitable principle of recoupment. As the issue is not presently before it, the Court expresses no opinion on whether the withholdings were permissible under recoupment principles.

[11] Doc. No. 3043 at 10.

###

Date: September 26, 2019

Ernest M. Robles
United States Bankruptcy Judge

Exhibit M

Exhibit M

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

Samuel R. Maizel (SBN 189301)
samuel.maizel@dentons.com
Tania M. Moyron (SBN 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017
Telephone: (213) 623-9300
Facsimile: (213) 623-9924

☐ Individual *appearing without an attorney*
☒ *Attorney for:* Debtors and Debtors In Possession

FOR COURT USE ONLY

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 Dialysis, LLCLiquidation Corporation, a California corporation,

Debtors and Debtors In Possession.

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

NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE RE: (*title of motion*[1]):
Debtors' Bid Procedures Motion [Docket No. 1279]

PLEASE TAKE NOTE that the order titled 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 Sections 363(b) and (f)(5) was lodged on (*date*) 10/08/2019 and is attached. This order relates to the motion which is docket number 1279.

[1] Please abbreviate if title cannot fit into text field.

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
JOHN A. MOE, II (Bar No. 066893)
john.moe@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

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.*,

Debtor and Debtor 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 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
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

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 §§ 363(b) and (f)(5)

Hearing:
Date: September 25, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

On January 17, 2019, Verity Health System Of California, Inc. and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Notice of Motion and Motion for the Entry of (I) an Order (i) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective 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. 1279] (the "Sale Motion"). In the Sale Motion, the Debtors sought an order granting, among other things, authority to sell certain property free and clear of claims, interests, and encumbrances, pursuant to §§ 363(b) and (f) of title 11 of the United States Code (the "Bankruptcy Code"),[1] to Strategic Global Management, Inc. ("SGM").

On March 22, 2019, the California Department of Health Care Services ("DHCS") filed *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] (the "Initial DHCS Objection"). In the Initial DHCS Objection, the DHCS argued that the California Medical Assistance Program ("Medi-Cal") Provider Agreements between the Debtors and DHCS (the "Provider Agreements") could not be sold to SGM free and clear of claims, interests, and encumbrances.

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

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

On April 17, 2019, the Court held a hearing on the Sale Motion. On May 2, 2019, the Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Asset 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"). Pursuant to the Sale Order, the Court granted the Sale Motion and continued the hearing the Initial DHCS Objection to determine whether the Sale Order effectuated a transfer of the Provider Agreements free and clear of claims, interests, and encumbrances. *See* Sale Order, ¶ 31 at 24-25. Further, the Court provided that "[n]othing in this Sale Order shall apply to Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and DHCS or a Court order resolving the DHCS's objections." *Id.* The Court set the continued hearing on June 5, 2019, at 410:00 a.m. (Pacific Time), which was ultimately continued to September 25, 2019, at 10:00 a.m. (Pacific Time) (the "Hearing"), by stipulation between the Debtors and DHCS. *See id.*; *see also* Docket Nos. 2278, 2377, 2606, 2686, 2856, 2928.

On September 11, 2019, the DHCS filed *Creditor California Department of Health Care Services's Supplemental Objection to (1) Debtors' Motion for 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] (together with the Initial DHCS Objection, the "DHCS Objections").

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

On September 25, 2019, at 10:00 a.m. (Pacific Time), the Court held the Hearing. Appearances were as set forth on the record of the Hearing.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

The Court, having considered the Sale Motion and the Sale Brief, the DHCS Objections, the Debtors' Reply, the Committees' Reply; having considered the statements, arguments, and representations of counsel, as set forth on the record of the Hearing; incorporating herein by this reference the findings of fact and conclusions of law set forth in the Sale Order; and for the reasons set forth in the Memorandum Decision, which are fully incorporated herein by this reference,

HEREBY ORDERS AS FOLLOWS:

1. The Debtors are authorized to transfer the Provider Agreements to SGM, free and clear of claims, interests, and encumbrances pursuant to §§ 363(b) and (f)(5) and the Sale Order.

2. The DHCS Objections are overruled in their entirety.

3. The stay provided pursuant to Bankruptcy Rule 6004(h) is waived with respect to this Order and the Memorandum Decision.

4. 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 for St. Francis Medical Center Provider Agreement No. 148769215; the St. Vincent Medical Center Provider Agreement No. 1124004304; the Seton Medical Center Provider Agreement No. 1154428688; and the St. Vincent Dialysis Center Provider Agreement No. CDC70030F, and all other Provider Agreements for any of the aforesaid Hospitals or Dialysis Center 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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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 ("HQAF 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 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 HQAF Program.

IT IS SO ORDERED.

###

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit N

Exhibit N

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General
KENNETH K. WANG
Deputy Attorney General
State Bar No. 201823
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6217
Fax: (213) 897-2805
E-mail: Kenneth.Wang@doj.ca.gov
Attorneys for Creditor
California Department of Health Care Services

IN THE UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re: **VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al.,** Debtor and Debtors In Possession.	CASE NO. 2:18-bk-20151-ER **CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S OPPOSITION TO THE PROPOSED ORDER [ECF NO. 3322]** Courtroom: 1568 Judge Ernest M. Robles

/x/ 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

1820151191009000000000009

Affects Verity Holdings, LLC
Affects De Paul Ventures, LLC
Affects De Paul Ventures – San Jose Dialysis, LLC,

Debtors and Debtors in Possession.

INTRODUCTION

Debtors' proposed order with regard to the Court's Memorandum of Decision (Memo) on the transfer of their Medi-Cal Provider Agreement is overreaching and self-gratuitous. It extends far beyond the findings and plain language stated in the Memorandum. Thus, Debtors' proposed order, which deviates from the plain language of the Memorandum, must be modified by the Court.

ARGUMENT

The Court issued the Memorandum on September 26, 2019, and instructed Debtors to submit an order "consistent" with the Memorandum. Memorandum, ECF No. 3146. Twelve days later, on October 8, 2019, Debtors lodged their proposed order for the Memorandum. Proposed Order, ECF No. 3322. The proposed order is not "consistent" with the Memorandum. It overreaches by inserting gratuitous terms, to, for example, prohibit the Department's recoupment after the sale.

A. THE COURT DECLINED TO DECIDE ON THE RECOUPMENT ISSUE

In the Memorandum, the Court emphasized that the issue of applicability of recoupment subsequent to the transfer of Medi-Cal Provider Agreements had "not been sufficiently briefed." Thus, it "decline[d] to decide the [recoupment] issue at present, without prejudice to the ability of interested parties to raise the issue by way of motion." Memorandum 10, ECF No. 3146.

Contrary to and despite the Court's plain reservation on the recoupment issue, the proposed order seeks to prohibit the Department's recoupment after the transfer. It states:

> 4. DHCS [Department] shall not adjust, offset, lien or recoup any payments owing to SGM [Buyer] and other SGM affiliates (collectively, "SGM Buyers") which are assigned any rights in connection with the transfer of the Medi-Cal Provider Agreements . . . after the transfer of the assets . . . .

Proposed Order 3, ECF No. 3322.

Accordingly, the proposed order overreached on the recoupment issue. Thus, any reference to the recoupment must be stricken from the proposed order.

B. THE PROPOSED ORDER ALSO OVERREACHED ON OTHER ISSUES NOT CONSIDERED BY THE COURT

The parties did not brief, nor did the Court, consider the nature of the forms or agreements that SGM must sign, after the sale, with regard to the transfer of Debtors' Medi-Cal Provider Agreements.

As a preliminary matter, the Medi-Cal Provider Agreements, include Debtors', specifically require the provider to "comply with the . . . terms and conditions" therein, including the successor joint and successor liability." Declaration of Hanh Vo, Ex. 5, ¶ 37, ECF No. 3043-1.

As the Court noted in *Gardens*, "to become entitled to receive Medi-Cal payments for providing treatment to Medi-Cal beneficiaries, the Debtor was required to enter into a Provider Agreement with DHCS." *In re Gardens Regional Hospital and Medical Center, Inc*., 569 B.R. 788, 796 (Bankr. C.D. Cal. 2017). By signing the Medi-Cal Provider Agreements, Debtor specifically agreed to the successor joint liability provision therein. Affirmed by this Court in *Gardens*, the Debtors' eligibility to participate in the Medi-Cal program was conditioned upon their agreement to the terms in the Medi-Cal Provider Agreement. *Id*. The Medi-Cal Provider Agreement, by the law laid down by this Court, creates a logical relationship between the Medi-Cal debt and payment benefits on the Debtors' Provider Agreements. *Id*, at 796-797.

Here, because the Court refrained from addressing the recoupment issue in the Memorandum, no provision that relates to recoupment in any way should be included in the order, including the provision below, which seeks to bar any recovery by the Department, after the sale, even by recoupment.

///

> 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 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 HQAF program.

Proposed Order 4, ECF No. 3322.

Rather than overreaching, the proposed order should be consistent by tracking the language of the Memorandum, simply stating:

[THE COURT] HEREBY ORDERS AS FOLLOWS:

1. The Debtors are authorized to transfer the Provider Agreements to SGM, free and clear of claims, interests, and encumbrances pursuant to §§ 363 (f)(5).
2. The DHCS Objections are overruled in their entirety.
3. Because the Provider Agreements will not be transferred to SGM until the sale closes, the stay imposed by Bankruptcy Rule 6004(h) is not necessary to protect DHCS's right to appeal.

CONCLUSION

Given the foregoing, the Court cannot adopt the Debtors' proposed order with regard its Memorandum of Decision on the transfer of their Medi-Cal Provider Agreements.

Dated: October 9, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General

/s/ Kenneth K. Wang
KENNETH K. WANG
Deputy Attorney General
Attorneys for Creditor
Department of Health Care Services

LA2018602105

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: California Office of the Attorney General, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

A true and correct copy of the foregoing document entitled:

CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S OPPOSITION TO THE PROPOSED ORDER [ECF NO. 3322]

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 9, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Lance N Jurich ljurich@loeb.com
David E Lemke david.lemke@wallerlaw.com
Bryan L Ngo bngo@fortislaw.com
Mary H Haas maryhaas@dwt.com
Mark A Neubauer mneubauer@carltonfields.com
Latonia Williams lwilliams@goodwin.com
Latonia Williams lwilliams@goodwin.com
Alicia K Berry Alicia.Berry@doj.ca.gov
Hutchison B Meltzer hutchison.meltzer@doj.ca.gov
Julie H Rome-Banks julie@bindermalter.com
Eric J Fromme efromme@tocounsel.com
Adam G Wentland awentland@tocounsel.com
Keith Patrick Banner kbanner@greenbergglusker.com
Brian L Davidoff bdavidoff@greenbergglusker.com
Eric J Fromme efromme@tocounsel.com
Adam G Wentland awentland@tocounsel.com
Kyrsten Skogstad kskogstad@calnurses.org
Michael B Reynolds mreynolds@swlaw.com
Debra Riley driley@allenmatkins.com

Elizabeth Berke-Dreyfuss edreyfuss@wendel.com
William M Rathbone wrathbone@grsm.com
Jeffrey C Wisler jwisler@connollygallagher.com
Rose Zimmerman rzimmerman@dalycity.org
Peter J Benvenutti pbenvenutti@kellerbenvenutti.com
Jane Kim jkim@kellerbenvenutti.com
Gregory R Jones gjones@mwe.com
Kyra E Andrassy kandrassy@swelawfirm.com
Stephen F Biegenzahn efile@sfblaw.com
Karl E Block kblock@loeb.com
Shawn M Christianson cmcintire@buchalter.com
Andy J Epstein taxcpaesq@gmail.com
Michael G Fletcher mfletcher@frandzel.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Lawrence B Gill lgill@nelsonhardiman.com
Gary E Klausner gek@lnbyb.com
Craig G Margulies Craig@MarguliesFaithlaw.com
Monserrat Morales mmorales@marguliesfaithlaw.com
Kevin H Morse kevin.morse@saul.com
Alan I Nahmias anahmias@mbnlawyers.com
Mark A Neubauer mneubauer@carltonfields.com
Abigail V O'Brient avobrient@mintz.com
Mark D Plevin mplevin@crowell.com
David M Poitras dpoitras@wedgewood-inc.com
Michael B Reynolds mreynolds@swlaw.com
Mary H Rose mrose@buchalter.com
Megan A Rowe mrowe@dsrhealthlaw.com
Rosa A Shirley rshirley@nelsonhardiman.com
Andrew Still astill@swlaw.com
Gary F Torrell gft@vrmlaw.com
Jason Wallach jwallach@ghplaw.com
Gerrick Warrington gwarrington@frandzel.com
Steven T Gubner sgubner@bg.law
Phillip K Wang phillip.wang@rimonlaw.com
Elan S Levey elan.levey@usdoj.gov
John Mark Jennings johnmark.jennings@kutakrock.com
Lisa M Peters lisa.peters@kutakrock.com
Marilyn Klinger MKlinger@smtdlaw.com
Cristina E Bautista cristina.bautista@kattenlaw.com
Marsha A Houston mhouston@reedsmith.com

Michael D Breslauer mbreslauer@swsslaw.com
Christopher J Petersen cjpetersen@blankrome.com
Mariam Danielyan md@danielyanlawoffice.com
Ivan L Kallick ikallick@manatt.com
Paul R. Glassman pglassman@sycr.com
Kyra E Andrassy kandrassy@swelawfirm.com
Jeffrey K Garfinkle jgarfinkle@buchalter.com
Michael S Held mheld@jw.com
Michael St James ecf@stjames-law.com
M Douglas Flahaut flahaut.douglas@arentfox.com
Robert M Hirsh Robert.Hirsh@arentfox.com
Aram Ordubegian ordubegian.aram@arentfox.com
Sabrina L Streusand Streusand@slollp.com
Alan I Nahmias anahmias@mbnlawyers.com
Florice Hoffman fhoffman@socal.rr.com
Rosa A Shirley rshirley@nelsonhardiman.com
Ralph J Swanson ralph.swanson@berliner.com
Chris D. Kuhner c.kuhner@kornfieldlaw.com
James Cornell Behrens jbehrens@milbank.com
Jennifer L Nassiri jennifernassiri@quinnemanuel.com
Eric D Goldberg eric.goldberg@dlapiper.com
Monique D Jewett-Brewster mjb@hopkinscarley.com
Damarr M Butler butler.damarr@pbgc.gov
Lori A Butler butler.lori@pbgc.gov
Melissa T Ngo ngo.melissa@pbgc.gov
Marianne S Mortimer mmortimer@sycr.com
Sara Chenetz schenetz@perkinscoie.com
Simon Aron saron@wrslawyers.com
Richard A Lapping richard@lappinglegal.com
Mark A Serlin ms@swllplaw.com
Stephen F Biegenzahn efile@sfblaw.com
Paul J Laurinplaurin@btlaw.com
Ron Bender rb@lnbyb.com
Monica Y Kim myk@lnbrb.com
Emily P Rich erich@unioncounsel.net
Neal L Wolf nwolf@hansonbridgett.com
Steven G. Polard spolard@ch-law.com
David N Crapo dcrapo@gibbonslaw.com
Kevin M Eckhardt keckhardt@huntonak.com
Brian D Huben hubenb@ballardspahr.com

Latonia Williams lwilliams@goodwin.com
Mark A Neubauer mneubauer@carltonfields.com
Matthew S Walker matthew.walker@pillsburylaw.com
Lori L Purkey bareham@purkeyandassociates.com
Robert N Amkraut ramkraut@foxrothschild.com
Nathan A Schultz nschultz@foxrothschild.com
Darryl S Laddin bkrfilings@agg.com
Howard Camhi hcamhi@ecjlaw.com
John R OKeefe, Jr jokeefe@metzlewis.com
Paul J Pascuzzi ppascuzzi@ffwplaw.com
Jason D Strabo jstrabo@mwe.com
Aaron Davis aaron.davis@bryancave.com
Andrew J Ziaja aziaja@leonardcarder.com
Joseph A Kohanski jkohanski@bushgottlieb.com
Seth B Shapiro seth.shapiro@usdoj.gov
Alvin Mar alvin.mar@usdoj.gov
Hatty K Yip hatty.yip@usdoj.gov
Scott E Blakeley seb@blakeleyllp.com
Samuel R Maizel samuel.maizel@dentons.com
John A Moe, II john.moe@dentons.com
Tania M Moyron tania.moyron@dentons.com
Bruce Bennett bbennett@jonesday.com
Bruce Bennett bbennett@jonesday.com
Dustin P Branch branchd@ballardspahr.com
Matthew S Walker matthew.walker@pillsburylaw.com
Charles E Nelson nelsonc@ballardspahr.com
Michael Hogue hoguem@gtlaw.com
Thomas J Polis tom@polis-law.com
Lior Katz katzlawapc@gmail.com

2. <u>SERVED BY UNITED STATES MAIL</u>:

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 9, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

Melissa W Jones
Waller Lansden Dortch & Davis, LLP
511 Union St., Suite 2700
Nashville, TN 37219

Scott Schoeffel
THEODORA ORINGHER PC
535 Anton Boulevard, Ninth Floor
Costa Mesa, CA 92626-7109

Shawn C Groff
1330 Broadway Suite 1450
Oakland, CA 94612

Mollie Simons
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

Brent F Basilico
Sellar Hazard & Lucia
201 North Civic Dr., Ste. 145
Walnut Creek, CA 94596

Steven M Berman
101 E Kennedy Blvd., Ste. 2800
Tampa, FL 33602

Rachel C Quimby
Daglian Law Group APLC
701 N Brand Blvd Ste 610
Glendale, CA 91203

Phillip G Vermont
Randick O'Dea & Tooliatos LLP
5000 Hopyard Rd., Ste 225
Pleasanton, CA 94588

Margaret M Anderson
Fox Swibel Levin & Carroll LLP
200 West Madison St
Chicago, IL 60606

Ryan Schultz
Fox Swibel Levin & Carroll LLP
200 W. Madison Street
Suite 3000
Chicago, IL 60606

Schuyler Carroll
PERKINS COIE, LLP
30 ROCKEFELLER PLZ FL 22,
New York, New York 10111

Donald R Kirk
Carlton Fields
4221 W Boy Scout Blvd Ste 1000
Tampa, FL 33607

John Ryan Yant
Carlton Fields Jorden Burt, P.A.
4221 W Boy Scout Blvd, Ste. 1000
Tampa, FL 33607

John R O'Keefe, Jr.
Metz Lewis Brodman Must O'Keefe LLC
535 Smithfield St Ste 800
Pittsburgh, PA 15222
Nathan F Coco
McDermott Will & Emery
444 West Lake Street
Chicago, IL 60606-0029

Megan Preusker
McDermott Will & Emery
444 West Lake Street
Chicago, IL 60606-0029

Jason M Reed
Maslon LLP
90 S 7th St Ste 3300
Minneapolis, MN 55402

Clark Whitmore
Maslon LLP
3300 Wells Fargo Center
90 S 7th St
Minneapolis, MN 55402

Daniel S Bleck
Mintz, Levin, et al
One Financial Center
Boston, MA 02111

Ian A Hammel
Mintz Levin Cohn Ferris Glovsky & Popeo
One Financial Center
Boston, MA 02111

Paul J Ricotta
Mintz Levin Cohn Ferris Glovsky and Pope
Chrysler Center
666 Third Ave
New York, NY 10017

Sam J Alberts
DENTONS US LLP
1900 K Street NW
Washington, DC 20006

Benjamin Rosenblum
250 Vesey St
New York, NY 10281

William P Wassweiler
Ballard Spahr LLP
80 S Eighth St Ste 2000
Minneapolis, MN 55402

3. SERVED BY OVERNIGHT MAIL AND ELECTRONIC MAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 9, 2019**, I served the following persons and/or entities by overnight mail and electronic mail as follows.

Samuel Maizel, Esq. (on ECF)
Dentons US LLP
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017
Samuel.Maizel@dentons.com

Gregory A. Bray, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067
gbray@milbank.com

Hatty Yip, Esq. (on ECF)
Office of the United States Trustee
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017
Hatty.Yip@usdoj.gov

4. SERVED BY PERSONAL DELIVERY: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 9, 2019**, I served the following persons and/or entities by personal delivery as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles
United States Bankruptcy Court
255 East Temple Street
Courtroom 1568
Los Angeles, CA 90012

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

October 9, 2019	Cecilia Apodaca	/s/ Cecilia Apodaca
Date	*Printed Name*	*Signature*

Exhibit O

Exhibit O

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
JOHN A. MOE, II (Bar No. 066893)
john.moe@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and Debtors In Possession

FILED & ENTERED

OCT 11 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.*,

Debtor and Debtor 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 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
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

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 §§ 363(b) and (f)(5)

Hearing:
Date: September 25, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

On January 17, 2019, Verity Health System Of California, Inc. and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Notice of Motion and Motion for the Entry of (I) an Order (i) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective 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. 1279] (the "Sale Motion"). In the Sale Motion, the Debtors sought an order granting, among other things, authority to sell certain property free and clear of claims, interests, and encumbrances, pursuant to §§ 363(b) and (f) of title 11 of the United States Code (the "Bankruptcy Code"),[1] to Strategic Global Management, Inc. ("SGM").

On March 22, 2019, the California Department of Health Care Services ("DHCS") filed *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] (the "Initial DHCS Objection"). In the Initial DHCS Objection, the DHCS argued that the California Medical Assistance Program ("Medi-Cal") Provider Agreements between the Debtors and DHCS (the "Provider Agreements") could not be sold to SGM free and clear of claims, interests, and encumbrances.

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

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

On April 17, 2019, the Court held a hearing on the Sale Motion. On May 2, 2019, the Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Asset 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"). Pursuant to the Sale Order, the Court granted the Sale Motion and continued the hearing the Initial DHCS Objection to determine whether the Sale Order effectuated a transfer of the Provider Agreements free and clear of claims, interests, and encumbrances. *See* Sale Order, ¶ 31 at 24-25. Further, the Court provided that "[n]othing in this Sale Order shall apply to Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and DHCS or a Court order resolving the DHCS's objections." *Id.* The Court set the continued hearing on June 5, 2019, at 410:00 a.m. (Pacific Time), which was ultimately continued to September 25, 2019, at 10:00 a.m. (Pacific Time) (the "Hearing"), by stipulation between the Debtors and DHCS. *See id.*; *see also* Docket Nos. 2278, 2377, 2606, 2686, 2856, 2928.

On September 11, 2019, the DHCS filed *Creditor California Department of Health Care Services's Supplemental Objection to (1) Debtors' Motion for 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] (together with the Initial DHCS Objection, the "DHCS Objections").

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

On September 25, 2019, at 10:00 a.m. (Pacific Time), the Court held the Hearing. Appearances were as set forth on the record of the Hearing.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

The Court, having considered the Sale Motion and the Sale Brief, the DHCS Objections, the Debtors' Reply, the Committees' Reply, and the DHCS' objection to the Debtors' proposed form of order memorializing the relief granted in the Memorandum Decision [Docket No. 3330]; having considered the statements, arguments, and representations of counsel, as set forth on the record of the Hearing; incorporating herein by this reference the findings of fact and conclusions of law set forth in the Sale Order; and for the reasons set forth in the Memorandum Decision, which are fully incorporated herein by this reference,

HEREBY ORDERS AS FOLLOWS:

1. The Debtors are authorized to transfer the Provider Agreements to SGM, free and clear of claims, interests, and encumbrances pursuant to §§ 363(b) and (f)(5) and the Sale Order.

2. The DHCS Objections are overruled in their entirety.

3. The stay provided pursuant to Bankruptcy Rule 6004(h) is waived with respect to this Order and the Memorandum Decision.

4. DHCS shall not adjust, offset, or 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 for St. Francis Medical Center Provider Agreement No. 148769215; the St. Vincent Medical Center Provider Agreement No. 1124004304; the Seton Medical Center Provider Agreement No. 1154428688; and the St. Vincent Dialysis Center Provider Agreement No. CDC70030F, and all other Provider Agreements for any of the aforesaid Hospitals or Dialysis Center 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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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 ("HQAF 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 HQAF Program.[2] 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 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 HQAF 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 HQAF Program.[3]

[2] The Memorandum Decision did not determine whether DHCS' recoupment rights against SGM (if any) are extinguished by the transfer of the Provider Agreements free and clear of claims, interests, and encumbrances. *See* Memorandum Decision at 10 ("The Debtors request that the order on the Motion state that DHCS' recoupment rights against SGM, if any, must be first exercised against payments due to the Debtors from Medi-Cal, then against funds held by the Debtors generated by past interim Medi-Cal payments, and then against any sale proceeds generated by the sale of the Provider Agreement. The issue of the applicability of recoupment subsequent to the sale of the Provider Agreements free and clear of claims and interests has not been sufficiently briefed. The Court declines to decide the issue at present, without prejudice to the ability of interested parties to raise the issue by way of motion.").

[3] *See* footnote 2, above.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

IT IS SO ORDERED.

###

Date: October 11, 2019

Ernest M. Robles
United States Bankruptcy Judge

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit P

Exhibit P

大成 DENTONS

Sonia R. Martin

sonia.martin@dentons.com
D +1 415-882-2476

Dentons US LLP
One Market Plaza
Spear Tower, 24th Floor
San Francisco, CA 94105
United States

dentons.com

December 17, 2019

VIA EMAIL

Gary E. Klausner
Levene, Neale, Bender, Yoo & Brill L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, California 90067
gek@lnbyb.com

Robert W. Lundy, Jr.
Hooper, Lundy & Bookman, P.C.
1875 Century Park East, Suite 1600
Los Angeles, California 90067
rlundy@health-law.com

Re: *In re Verity Health System of California, et al.*, Case No. 2:18-bk-20151-ER
Notice of Termination Effective Date

Dear Mr. Klausner and Mr. Lundy:

As you are aware, on November 25, 2019, November 27, 2019, and December 5, 2019, the Debtors sent Strategic Global Management, Inc. ("SGM") notices of SGM's material breaches under that certain asset purchase agreement [Docket No. 2305-1], dated January 8, 2019 (the "APA"), as approved by that certain *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* entered May 2, 2019 [Docket No. 2306].

As a result of each of the above material breach notices, the APA will terminate effective December 27, 2019.

Very truly yours,

Sonia R. Martin

cc: Samuel R. Maizel (samuel.maizel@dentons.com)
Tania M. Moyron (tania.moyron@dentons.com)
Claude D. Montgomery (claude.montgomery@dentons.com)

Exhibit Q

Exhibit Q

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

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
☐ 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.

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-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]

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

Exhibit R

Exhibit R

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
SONIA R. MARTIN (Bar No. 191148)
sonia.martin@detons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924
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.	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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

[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.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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].

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Dated: December 6, 2019

DENTONS US LLP
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.*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

[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.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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").

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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."

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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),

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Dated: December 6, 2019

DENTONS US LLP
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.*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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].

/ / /

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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this copy from your system. Please see dentons.com for Legal Notices.

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.

GARY E. KLAUSNER, Esq.
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067
Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244
gek@lnbyb.com | **www.lnbyb.com**

The preceding E-mail message is subject to Levene, Neale, Bender, Yoo & Brill L.L.P.'s email policies which can be found at http://www.lnbyb.com/disclaimers.htm.

Please consider the environment before printing this email

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

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this copy from your system. Please see dentons.com for Legal Notices.

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.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067
Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244
gek@lnbyb.com | **www.lnbyb.com**

The preceding E-mail message is subject to Levene, Neale, Bender, Yoo & Brill L.L.P.'s email policies which can be found at http://www.lnbyb.com/disclaimers.htm.

Please consider the environment before printing this email

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.
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067
Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244
gek@lnbyb.com | www.lnbyb.com

The preceding E-mail message is subject to Levene, Neale, Bender, Yoo & Brill L.L.P.'s email policies which can be found at http://www.lnbyb.com/disclaimers.htm.

Please consider the environment before printing this email

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

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this copy from your system. Please see dentons.com for Legal Notices.

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.

GARY E. KLAUSNER, Esq.
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067
Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244
gek@lnbyb.com | www.lnbyb.com

The preceding E-mail message is subject to Levene, Neale, Bender, Yoo & Brill L.L.P.'s email policies which can be found at http://www.lnbyb.com/disclaimers.htm.

Please consider the environment before printing this email

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.

GARY E. KLAUSNER, Esq.
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067
Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244
gek@lnbyb.com | **www.lnbyb.com**

The preceding E-mail message is subject to Levene, Neale, Bender, Yoo & Brill L.L.P.'s email policies which can be found at http://www.lnbyb.com/disclaimers.htm.

Please consider the environment before printing this email

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

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this copy from your system. Please see dentons.com for Legal Notices.

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.
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067
Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244
gek@lnbyb.com | www.lnbyb.com

The preceding E-mail message is subject to Levene, Neale, Bender, Yoo & Brill L.L.P.'s email policies which can be found at http://www.lnbyb.com/disclaimers.htm.

Please consider the environment before printing this email

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
LAW OFFICES
LNBY&B

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:

GARY E. KLAUSNER ATTORNEY AT LAW ▪ EMAIL: GEK@LNBYB.COM ▪ DIRECT: 310.229.3360
10250 CONSTELLATION BLVD., STE 1700, LOS ANGELES, CA 90067 ▪ TEL: 310.229.1234 FAX: 310.229.1244 WWW.LNBYB.COM

LNBY&B

> "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.

LNBY&B

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 S

Exhibit S

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

--oOo--

In Re:	Case No. 2:18-bk-20151-ER
VERITY HEALTH SYSTEM OF CALIFORNIA, INC.,	Chapter 11
Debtor,	Los Angeles, California November 26, 2019 Wednesday, 10:00 A.M.

STATUS CONFERENCE RE: [2995] MOTION FOR APPROVAL OF CHAPTER 11 DISCLOSURE STATEMENT NOTICE OF HEARING AND MOTION OF THE DEBTORS FOR AN ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF DEBTORS' PLAN; AND (IV) GRANTING RELATED RELIEF

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ERNEST ROBLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For California Dept. of Health Care Services: KENNETH K. WANG, ESQ.
Department of Justice
300 South Spring Street
Suite #1702
Los Angeles, California 92887

Proceedings produced by electronic sound recording; transcript produced by transcription service.

For Verity Health System of California, Inc.: (*Via Telephone*)	SAMUEL R. MAIZEL, ESQ. TANIA M. MOYRON, ESQ. NICK KOFFROTH, ESQ. SAM J. ALBERTS, ESQ. Dentons US, LLP 601 South Figueroa Street Suite #2500 Los Angeles, California 90017 SONIA MARTIN, ESQ. Dentons US, LLP One Market Plaza Spear Tower, 24th Floor San Francisco, California 94105
For Strategic Global Management, Inc.:	GARY E. KLAUSNER, ESQ. Levene Neale Bender Yoo & Brill 10250 Constellation Boulevard Suite #1700 Los Angeles, California 90067
For the Official Committee of Unsecured Creditors:	MARK SHINDERMAN, ESQ. Milbank, LLP 2029 Century Park East Los Angeles, California 90067
For MOB Lenders:	BRUCE BENNETT, ESQ. Jones Day 555 South Flower Street, 50th Floor Los Angeles, California 90071
For Wells Fargo Bank:	PAUL J. RICOTTA, ESQ. Mintz Levin One Financial Center Boston, Massachusetts 02111
For U.S. Bank: (*Via Telephone*)	MEGAN PREUSKER, ESQ. NATHAN F. COCO, ESQ. McDermott Will & Emery, LLP 444 West Lake Street Suite #4000 Chicago, Illinois 60606

For U.S. Bank:	CLARK T. WHITMORE, ESQ. Maslon Law Firm 3300 Wells Fargo Center 90 South Seventh Street Minneapolis, Minnesota 55402
For Medtronic USA: (*Via Telephone*)	DAVID M. GUESS, ESQ. Greenberg Traurig, LLP 18565 Jamboree Road Suite #500 Irvine, California 92612
For Department of Health and Human Services: (*Via Telephone*)	ELAN S. LEVEY, ESQ. Federal Building Suite #7516 300 North Los Angeles Street Los Angeles, California 90012
For the Chub Companies: (*Via Telephone*)	DREW MCGEHRIN, ESQ. Duane Morris, LLP 30 South 17th Street Philadelphia, Pennsylvania 19103
For California Statewide Community Development Authority:	DEBRA A. RILEY, ESQ. Allen Matkins Leck Gamble Mallory & Natsis, LLP One America Plaza 600 West Broadway, 27th Floor San Diego, California 92101
For Cigna: (*Via Telephone*)	JEFFREY C. WISLER, ESQ. Connolly Gallagher, LLP 1201 North Market Street 20th Floor Wilmington, Delaware 19801
Court Recorder:	Maria Evangelista U.S. Bankruptcy Court Central District of California Edward R. Roybal Federal Building and Courthouse 255 East Temple Street, Room #940 Los Angeles, California 90012 (855) 460-9641

Court Transcriptionist: Ruth Ann Hager, C.E.T.**D-641
Ben Hyatt Certified Deposition Reporters
17835 Ventura Boulevard, Suite 310
Encino, California 91316

LOS ANGELES, CALIFORNIA, TUESDAY, NOVEMBER 26, 2019

10:06 A.M.

--oOo--

THE CLERK: Please rise and come to order. This court is now in session, the Honorable Ernest M. Robles presiding.

THE COURT: Good morning. Be seated, please.

ATTORNEYS: Good morning, Your Honor.

THE COURT: All right. We'll take item #10.00 on this morning's calendar. I will begin with appearances in the courtroom, please.

MR. MAIZEL: Good morning, Your Honor. Samuel Maizel, Dentons US, LLP, on behalf of the debtors. With me in the courtroom today are my partners, Sonia Martin, Nick Koffroth and Tania Moyron.

THE COURT: Thank you.

MR. SHINDERMAN: Good morning, Your Honor. Mark Shinderman of Milbank on behalf of the Committee. My apologies to the clerk. I forgot to hand up a card. I'll do that afterwards.

THE COURT: All right.

MR. KLAUSNER: Good morning, Your Honor. Gary Klausner, Levene Neale Bender Yoo & Brill, representing Strategic Level Management, Inc.

THE COURT: Thank you.

MR. BENNETT: Bruce Bennet, Jones Day, on behalf of the MOB lenders and holders of other debtors -- the debtor.

MR. RICOTTA: Good morning, Your Honor. Paul Ricotta from Mintz Levin representing UMB Bank as the master trustee and co-counsel to Wells Fargo Bank as the 2005 bond trustee.

MS. PREUSKER: Good morning. Megan Preusker, McDermott Will & Emery, on behalf of U.S. Bank as the Series 2015 Notes trustee and my colleague Nathan Coco is appearing telephonically.

THE COURT: Thank you.

MR. WHITMORE: Good morning, Your Honor. Clark Whitmore from the Maslon law firm on behalf of U.S. Bank National Association as the 2017 Notes trustee.

MR. WANG: Good morning. I'm the Deputy Attorney General on behalf of California Department of Health Care Services, Kenneth Wang.

THE COURT: Thank you. All right. Let me begin with appearances in -- on the telephone. When I call your name, please make your appearance.

Sam Alberts?

MR. ALBERTS: Present.

THE COURT: Nathan Coco.

MR. COCO: Yes, good morning, Your Honor. Nathan

Coco on behalf of U.S. Bank as Series 2015 notes trustee.

THE COURT: Thank you.

David Guess?

MR. GUESS: Good morning. David Guess with Greenberg Traurig on behalf of Medtronic, USA.

THE COURT: Thank you. Melissa Harris?

MS. HARRIS: (Inaudible), Benefit Guaranty Corporation.

THE COURT: Thank you. Just a moment.

If any of you have telephones I'll ask you to turn those off. I think it's creating some interference with our sound system.

Elan Levy?

MS. LEVEY: Good morning, Your Honor. Elan Levey, Assistant U.S. Attorney on behalf of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services.

THE COURT: Thank you. Drew McGehrin?

MR. MCGEHRIN: Good morning. Drew McGehrin of Duane Morris on behalf of the Chub Companies.

THE COURT: Thank you.

Luis Sorazano (phonetic)?

MR. CERANTES: Good morning, Your Honor. This is (Indiscernible) Cerantes (phonetic) for Luis Sorazano.

THE COURT: Thank you.

MR. CERANTES: (Indiscernible) Medical Group.

THE COURT: Thank you, Mr. Cerantes.

Debra Riley.

MS. RILEY: Yes, Your Honor. Debra Riley of Allen Mackins on behalf of California Statewide Community Development Authority.

THE COURT: Thank you.

Camia Saladare (phonetic).

(No response.)

We'll pass that. Michael St. James?

MR. ST. JAMES: Thank you, Your Honor. Michael St. James appearing for the medical staff at Seaton.

THE COURT: Thank you, Mr. St. James.

Jeffrey Wisler.

MR. WISLER: Good morning, Your Honor. Jeffrey Wisler on behalf of Cigna.

THE COURT: Leonard Shulman is listen only and I believe the balance of the telephonics are listen only. If you intended to make an appearance by telephone and wish to speak, please give me your name at this point.

(No response.)

All right. Thank you. I think we're ready to go forward.

You'll have to forgive me. I don't have a clear sense of who's on first on this. I know that the Court at

first made the request for a status conference I think in connection with the prior order, but this seems to have morphed into something else. So why don't we hear from you, counsel?

MR. MAIZEL: Your Honor, we'll take that burden. This is a status conference that parties have asked -- the debtors asked for and the Court's agreed that there should be a status conference on the status of the SGM sale and that's because of issues that have arisen between us and SGM, over whether the sales should close and, if so, when and if so on what terms.

We asked the Court to be cognizant as we have tried to be in the pleadings that there are issues between the parties which would have -- we think it aired publicly -- would have the possibility of a negative impact on the value of the assets, ability of the debtors to keep facilities open and the morale of the staff that work so hard to keep these facilities open for the now more than a year in bankruptcy. So we'd ask -- and that is why we filed a large portion of the status report under seal.

We'd ask the Court to be cognizant of that. We'd ask the parties to be cognizant of that and if necessary we'd ask the Court to take us in chambers if we have to go into any detail --

THE COURT: My chambers aren't big enough.

(Laughter)

MR. MAIZEL: All right, Your Honor. Then I know how difficult it is to close courtrooms. So then I suggest we -- I don't know what Plan C is.

THE COURT: Just to highlight some things, I don't think there's any need to go into any of those matters whatsoever this morning. So --

MR. MAIZEL: All right, Your Honor. So since it's a status conference I'll do some good news first, what I traditionally like to do in status conferences. First, in the last 24 hours we received the Attorney General's approval for the disposition as we had proposed of the philanthropic foundation debtors of those assets. So I think we now have a clear runway to dispose of those assets under -- in agreement with the Attorney General State of California.

We, as the Court is aware, have gotten a Medicare settlement agreement approved by the Court. While we believe we have satisfied the asset purchase agreement's obligations with regard to Medi-Cal, we also have continued to negotiate for a settlement and believe we have a settlement in principle, which we are now negotiating the terms of a written settlement agreement. Hope to have the Court -- have it to the Court shortly.

And, of course, the -- we believe the conditions

and the discussions with the Attorney General over the conditions and the Attorney General approval of the sale have all been settled, so those are all good things that I want to make sure the Court is reminded of and bring to everyone's attention.

THE COURT: Has the Attorney General withdrawn his appeal?

MS. MOYRON: Your Honor, he didn't file an appeal.

THE COURT: All right.

MR. MAIZEL: So, Your Honor, so what we're down -- what we're left with now is the issues that have been raised with regard to -- as were stated in the reservation of rights I believe last night by Mr. Klausner on behalf of SGM that whether there are material adverse effects which excuse closing of the transaction by SGM. And as we stated in the status conference, we've asked for the Court to set a briefing schedule on that. It is in everyone's best interests to resolve that issue before December 31st because there is --

THE COURT: What issue is there to resolve?

MR. MAIZEL: Well, Your Honor, whether there are material adverse effects.

THE COURT: Well, doesn't that need to be brought before the Court at a much earlier stage?

MR. MAIZEL: Well, Your Honor, we believe that the vast majority -- in fact, we believe all of the conditions are either satisfied or the allegations that have been raised were waived because of the due diligence period that expired on January 8th of this year.

THE COURT: Well --

MR. MAIZEL: So we agree with Your Honor, but the problem is we have a buyer who believes there are material adverse effects and the asset pur --

THE COURT: That's what confused me and that's why I wasn't sure who was on first on this because why is it your responsibility to give an avenue for the airing of some sort of dispute which I think is the obligation of the purchaser to have raised?

MR. MAIZEL: Well, Your Honor, we have an obligation as fiduciary, as do our creditors, to see if this sale can close because this is still Plan A sale. If we can -- we are optimistic that if we show this buyer that there are no -- that the Court would find there are no material adverse effects, that this buyer who says in their papers --

THE COURT: I have a surprise for you. As far as the Court is concerned, the purchaser is a proud owner of a passel of funds. Have fun.

All right. Look, there is no definition, as far

as I'm aware, in Article II of what a material adverse effect is, so let me supply what I think that definition is and that definition is con -- a condition under which a transaction -- a transaction would no longer be viable. And because it appears in Article II there is another requirement that that adverse effect is either a result of fraud or misrepresentation. And if the -- and also because there is a specific time requirement to get that material adverse effect, it is the product of misrepresentation or fraud before the Court has long since passed.

So what we have here, in my view, is just buyer's remorse and I don't share in the boo-hoo of that. I had an opportunity to review some of the correspondence going back and forth. The picayune, the smallness of those alleged transactions do not, in my view, reach the level of material adverse effect. Sorry. That's what I think

The argument that somehow this Court is required to have an adversary proceeding is absurd. That only appears as far -- again, as far as I'm aware in the longest paragraph known to man and that is I believe 8.6. Yes, 8.6. We're long past 8.6. The Attorney General has done the right thing and we don't have those conditions.

So now we're left with a curious statement at page 35 of my copy of the APA, which says that whether a material adverse effect has occurred for any purpose under

this agreement shall be exclusive settled by determination made by the Bankruptcy Court. Doesn't say anything about an adversary proceeding. "Exclusively," in my view, means not appealable. So once we make the determination, which I don't think we can do on a timely basis anymore, that's gone.

After reviewing the statement of strategic, I don't want to cast any negative aspersions at all. But I want to make clear that I believe that it is operating very closely within the satellite of bad faith. I think it has an obligation to close. I think it wants to negotiate a better deal. I think it believes that it will be unpalatable for the Court and for others here to see patients, young, old, infirmed, being wheeled or carted out of the hospitals. That's a cynical view and I don't adhere to it.

I believe that this contract is interpreted under the laws of the State of California and so it has with it the implied covenant of good faith and fair dealing and I don't think that we have that here. I suspect that this will close and if not, then they will pay damages pursuant to this agreement.

All right. And that's all. And I don't see a need for any further hearing.

Mr. Klausner.

MR. KLAUSNER: First of all, Your Honor, I do have to say that our client is reserving all of its rights. There are certain comments that were made by counsel with which we disagree, so I don't want my silence to be deemed any sort of concession or admission.

I do appreciate and take seriously all of the Court's comments. It's apparent to me from the Court's demeanor that the Court has very strong feelings and has formed very strong impressions. My concern is that the issues that exist between the parties need to be resolved in the appropriate context.

Well, what has happened today is simply the following. The debtor presented the buyer pursuant to the agreement with a demand to come to a closing on December 5. Our client responded as required by the terms of the agreement by providing Verity with a notice that this is -- its obligation under Section 8.4 of the asset purchase agreement that if our client believes that there are any conditions, covenants, agreements that haven't been satisfied we give Verity notice. That's all we've done.

We haven't said that we're not going to a closing. We haven't refused to close. We haven't exercised any right to terminate the agreement. We simply gave Verity a notice that we're obligated to give Verity in which we listed various conditions and covenants that we

believe Verity has not complied with.

That notice triggers a 15 business-day period for Verity to respond either to cure the defects that we've identified or to indicate to us why we're incorrect. We received a letter, as you received. We received a letter from Verity's counsel last evening in which in the course of about 12 pagers Verity's counsel addressed the issues that we raised in our letter.

It is unfortunate that the Court saw fit to receive those letters, notwithstanding that they were under seal. It was our view that in the event litigation should arise between the parties the issues that -- that exist between the parties, the disputes and the controversies, if any, should be presented to the Court in the appropriate manner in the appropriate context. And I'm disappointed that the Court reviewed that correspondence and has now effectively concluded that if our client does not come to a closing on December 5 our client is in breach of contract.

There's been no complaint. There's been no response. There's been no motion for summary judgment. There's been no presentation of evidence. This Court has simply concluded based upon an exchange of letters, some of which contain enormous hyperbole, that our client will be in breach if we don't close. I think that's unfortunate.

I think our client has the right to go to a

closing or not go to a closing and if our client fails to go to a closing, our client has a right to test its position in a courtroom in accordance with rules of procedure and rules of evidence. And for this Court to conclude at this stage of the proceeding that our client is obligated to close and if fails to close you're going to impose damages, I think that's very unfortunate.

So I'm not going to debate today the merits or substantive issues that have been -- that may be presented to this court at a later date. I'm not going to take the bait. I will simply on behalf of our client reserve our rights. We'll take whatever steps we need to take to protect the interests of our client. Do you have any questions?

THE COURT: No.

MR. KLAUSNER: Thank you.

THE COURT: Anyone else?

MR. SHINDERMAN: Your Honor, may I have 30 seconds to talk to the debtor and then I'd like to make a quick statement?

THE COURT: Certainly.

(Pause)

MR. SHINDERMAN: Thank you, Your Honor. Mark Shinderman, Milbank, on behalf of the Committee.

Your Honor, first the context. This is a status

conference on the disclosure statement, just to clear the calendar, because the disclosure statement can't go forward unless we know that we're going to have a close sale, so that's the context in which this -- it's not just about the sale. It's about the disclosure statement. So at the end of this hearing I'd ask that you continue further the debtor's obligation to file a reply to the objections of the disclosure statement. It's not relevant until we know we have a closing, number one.

Number two is, I completely agree with the statements of the Court. The buyer either closes or doesn't close. We talked about that last time in the context of the AG motion and we said the same thing. The debtor doesn't have a right -- the buyer doesn't have a right to come in here and say, "I like this; I don't like that." To us it appears that either the buyer doesn't have the financial wherewithal to close or he's trying to renegotiate. I don't -- I can't prove that. I don't know that. I read the same letters you did and that's what it looks like.

Because as Mr. Maizel points out, the APA was very clear. We are very concerned about the APA and optionality and we're concerned about it with respect to the Attorney General. What it said is, you have a certain period of time to due diligence, otherwise, the only out

you have, buyer, is if there's a material adverse change. And we constantly check with the debtor that neither the secured creditors, nor the Committee, nor the DIP lender before us got in the way of the debtor doing what the debtor needed to do to operate in the ordinary course with outside consultants, et cetera.

So we agree; the buyer has to close or not close. If they don't close then there'll be an action to enforce damages at the appropriate time, at the appropriate place. But there's no in between. They either close or they don't close.

Some of the statements that are made are very serious and, of course, the Committee doing its duty immediately called the debtor and we're satisfied that the debtor is doing everything it's supposed to do in the ordinary course to maintain the safety of patient care and that's very critical, and we take that job very seriously. Some of our union members on the Committee are the ones providing those services as well and we are satisfied.

We'll stop there and say we agree with Your Honor; buyer closes or doesn't close. The consequences are what they are.

THE COURT: All right. Thank you very much.

Anyone else wish to be heard?

(No response.)

All right. I'll do the following. First, I won't take the bait either. What I stated was not really founded on any letters, actually. It was founded just on the representations that were made in the statement. I think it was a reservation of rights as far as the purchaser was concerned, which I found wholly inapposite to my understanding of the APA. It appears to the Court that perhaps the purchaser felt that the asset purchase agreement wasn't actually an asset purchase agreement. It was a contract to contemplate the purchase of an asset after the Attorney General removed his conditions. And so once the Attorney General did that, then it become -- became the proverbial dog that caught the car. They didn't know what to do.

So I think that's the situation we have. With all due respect to counsel, I respect them, but I think the position of his client doesn't hold water. And again, that's not based upon any letters. That's just my review of the asset purchase agreement and the clear terms of that or where the terms have not been clear they have been made clear by the Court. As I've indicated, I've given a definition of "material adverse effect."

Just to go on further, we would have a material adverse effect if, for example, a hospital lost a certificate of occupancy. And if somehow the -- that was

the result of misrepresentation of fraud. So it's a very high level. I don't think we've reached it here. So I suspect that this matter will close.

All right. Thank you very much.

ATTORNEY: Thank you, Your Honor.

MR. SHINDERMAN: I'm sorry, Your Honor. Your Honor, I apologize. We need a continued hearing on the disclosure statement --

THE COURT: I'll do that later.

MR. SHINDERMAN: Okay. Thank you, Your Honor.

(End at 10:33 a.m.)

* * * * * * *

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Date: 11/27/2019

RUTH ANN HAGER, C.E.T.**D-641

Exhibit T

Exhibit T

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General
KENNETH K. WANG
Deputy Attorney General
State Bar No. 201823
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6217
Fax: (916) 731-2125
E-mail: Kenneth.Wang@doj.ca.gov
Attorneys for Appellant
California Department of Health Care Services

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

In re **VERITY HEALTH SYSTEM OF CALIFORNIA, INC.,** Debtor,	Case No.: 2:19-cv-08762-JVS **APPELLANTS CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S OPENING BRIEF** Courtroom: Santa Ana, 10C Judge: Hon. James v. Selna Appeal Filed: October 9, 2019

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	1
I. Procedural Background	1
II. Statutory and Regulatory Background	3
A. Administration of the Medi-Cal System	3
B. Medi-Cal Financing	3
C. Delivery of Medi-Cal Services	4
D. Payments to Hospitals for Medi-Cal Services	5
E. Statutory Basis for Collection of HQA Fees	6
F. Reimbursement of Medi-Cal Overpayments	6
III. Jurisdiction	7
FACTUAL BACKGROUND	7
I. Debtors' HQA Fee Debt to Medi-Cal	7
II. Medi-Cal Overpayments to Debtors	8
III. Debtors Continue as Medi-Cal Providers Post Petition	8
ARGUMENT	9
I. The Bankruptcy Court Erred in Rejecting the Provider Agreements as Executory Contracts	9
A. Mutual Consideration for the Provider Agreement Included Successor Joint and Several Liability	9
B. Provider Agreements Are Executory Contracts Because the Contracting Parties Have Mutual Obligations	12
C. Case Law Affirms that Medi-Cal Providers Have No Statutory Entitlement to Bill Medi-Cal	13
D. PAMC and Guzman Do Not Provide the Debtors with a Statutory Right to Remain in Medi-Cal After the Sale	15
II. The Debtors Cannot Sell Their Agreement Under 11 U.S.C. § 363(f)	16
III. This Bankruptcy Court's Ruling Will Cause Severe, Negative Ramifications	18
IV. Debtors' Provider Agreements Require Successor Liability by the Buyer	19
V. The Department Requests an Expedited Appeal	21
CONCLUSION	21

TABLE OF AUTHORITIES

Page

CASES

Arnett v. Kennedy
416 U.S. 134 (1974) 13

Cervoni v. Secretary of Health, Education and Welfare
581 F.2d 1010 (1st Cir. 1978) 14

Erickson v. United States Department of Health and Human Services
67 F. 3d 858 (9th Cir. 1995) 14, 17

Goldberg v. Kelly
397 U.S. 254 (1970) 13

Guzman v. Shewry
552 F.3d 941 (9th Cir. 2009) 15, 16

In re Berg
230 F.3d 1165 (9th Cir. 2000) 18

In re Gardens Regional Hospital and Medical Center, Inc. (*Gardens*)
569 B.R. 788 (Bankr. C.D. Cal. 2017) 10, 12, 17, 18

In re Holland Enterprises, Inc. (*In re Holland*)
25 B.R. 301 (Bankr. E.D. N.C. 1982) 9, 12, 19, 20

In re Monsour Medical Center
8 B.R. 606 (Bankr. W.D. Pa. 1981) 9

In re St. Mary Hospital
89 B.R. 503 (E.D. Pa. 1988) 20

In re Terrace Chalet Apartments, Ltd.
159 B.R. 821 (E.D. Ill, 1993) 17

In re Tidewater Memorial Hospital, Inc.
106 B.R. 876 (Bankr. E.D. Va. 1989) 20

Koerpel v. Heckler
797 F.2d 858 14

TABLE OF AUTHORITIES
(continued)

Page

Lin v. State of California
78 Cal. App. 4th 931 (Cal. Ct. App. 2012) 14

Lockyer v. Mirant Corp.
398 F.3d 1098 (9th Cir. 2005) 18

Mednik v. State Department of Health Care Services
175 Cal. App. 4th 631 (Cal. Ct. App. 2009) 14

*PAMC, Ltd., v. Sebel*ius
747 F.3d 1214 (9th Cir. 2014) 15, 16

Richmond Leasing Co. v. Capital Bank, N.A.
762 F.2d 1303 (5th Cir. 1985) 19

Sims v. United States Dept. of Health and Human Services
224 F. 1008 (9th Cir. 2000) 17

STATUTES

11 U.S.C.
§§ 363(b) and (f)(5) 2
§ 363(F) 16, 17, 18
§ 363(f)(5) 2, 17
§ 365 ..... 9, 19, 20
§§ 1107(a) and 1108 1

28 U.S.C. § 1331 7

42 U.S.C.
§§ 1396 – 1396c 3
§§ 1396a and 1396b 3
§§ 1396b(a) and 1396d(b) (2019) 3
§ 1396b(w) (2019) 4

TABLE OF AUTHORITIES
(continued)

Page

Cal. Code Regs. Title 22
§ 50004(b)(1) (2019) 3
§§ 51016-51048 (2019) 7
§ 51047 (2019) 7

Cal. Welf. & Inst. Code
§ 10740 3
§ 14016.5(b) 4
§ 14063 3
§§ 14087.3-14089.8, 14200-1499.77 ..... 4, 5
§§ 14131 – 14138 ..... 4, 5
§§ 14133 and 14170 ..... 6, 18
§ 14169.50 6
§ 14169.50(b) 6
§ 14169.50(d) 6
§ 14169.51(ab) 5
§ 14169.51(*l*) 4
§ 14169.52(h) 6
§ 14169.53(b) 6, 13
§ 14170 19
§ 14170(a)(1) 7
§ 14171 7
§ 14301.1 ..... 5, 6

COURT RULES

Federal Rules of Appellate Procedure Rule 2 21

OTHER AUTHORITIES

42 C.F.R. §§ 433.50 – 433.74 (2019) 4

Minnesota Law Review 341, 344 (1980) 9

INTRODUCTION

The bankruptcy court erred in ruling that the Debtors' Medi-Cal Provider Agreements (Provider Agreements) are licenses that can be sold free and clear of the tens of millions of dollars that the Debtor owes to Appellant California Department of Health Care Services (Department). In so ruling, the bankruptcy court erroneously reasoned that the Provider Agreements are not enforceable contracts because they lacked mutual consideration. In addition, the bankruptcy court improperly concluded a key feature of the executory contract is absent in the Provider Agreement – mutual obligations by the Debtors and the Department. Specifically, the bankruptcy court incorrectly analyzed that no obligation is imposed upon the Department by the Provider Agreements. Contrary to the bankruptcy court's incorrect analysis, the Provider Agreements demonstrates both mutual consideration between the parties and obligation upon the Department.

If the Debtors are allowed to sell, transfer, and assign the Agreements without requiring the Debtors to pay their HQA Fee liabilities and Medi-Cal overpayments or the buyer to assume those liabilities on joint and several liability, then Debtors and the buyer would be allowed to divorce the benefits from the burdens of the Provider Agreements and undermine the HQA Fee system.

Accordingly, the bankruptcy court's order rejecting the Provider Agreements as executory contracts (ECF No. 3372) must be reversed.

BACKGROUND

I. PROCEDURAL BACKGROUND

On August 31, 2018 (Petition Date), Debtors including St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center (collectively, Debtors) filed their voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code. Debtors' bankruptcy cases are jointly administered and, pursuant to 11 U.S.C. §§ 1107(a) and 1108, Debtors continue to operate their

businesses and manage their affairs as Debtors-in-Possession.

On January 17, 2019, Debtors filed the Motion for an order: (a) approving form of the Asset Purchase Agreement (APA) for the buyer, Strategic Global Management, Inc. (hereafter, Buyer SGM), and for prospective overbidders; (b) approving procedures related to the assumption of certain executory contracts and unexpired leases; and (c) to sell their property free and clear of any claims, liens, and encumbrances (Motion for the Sale). Mot. for the Sale, ECF No. 1279.

On January 25, 2019, the Department filed its Objection to Debtors' Motion for the Sale. Dept.'s Objection and Supporting Decl., ECF Nos. 1353 & 1353-1. On September 11, 2019, the Department filed its Supplemental Objection to Debtors' Motion for the Sale. Dept.'s Supp. Obj. and Supporting Decl., ECF No. 3043 & 3043-1.

On September 26, 2019, the bankruptcy court issued the Memorandum of Decision Authorizing Debtors to *Sell Medi-Cal Provider Agreements Free and Clear of Interests Asserted by the California Department of Health Care Services, Pursuant to §* 363(f)(5) (For Publication) (hereafter, Memorandum of Decision). Memo. of Decision, ECF No. 3146. On October 11, 2019, the bankruptcy court entered an 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 §§ 363(b) and (f)(5) (Order). Order, ECF No. 3372.

On October 9, 2019, the Department appealed the Order to the United States District Court. Notice of Appeal, ECF No. 3327.

On October 22, 2019, the bankruptcy court denied the Department's Emergency Motion for the Entry of an Order to Stay the Sale of Medi-Cal Provider Agreements Free and Clear of Interests and the Asset Purchase Provisions that Relate to Buyer SGM's Rights and Obligations under Debtors' Medi-Cal Provider Agreements (Emergency Motion). Em. Mot. and the Supp. Decl., ECF Nos. 3211

& 3211-1. The bankruptcy court entered an order denying the Emergency Motion. Order on the Em. Mot., ECF No. 3444.

II. STATUTORY AND REGULATORY BACKGROUND

A. Administration of the Medi-Cal System

The federal Medicaid Act, enacted in 1965 as title XIX of the Social Security Act, is a federal-state administered Spending Clause program designed to provide medical assistance to eligible low-income individuals. 42 U.S.C. §§ 1396a & b (2019). The financing and administration of the Medicaid program are a cooperative effort between the federal government and participating states, as authorized under a federally approved State Medicaid Plan. Title 42 U.S.C. §§ 1396 – 1396c authorize federal financial support to states for medical assistance provided to certain low-income persons. In California, this program is the California Medical Assistance Program, which is commonly known as Medi-Cal. Cal. Welf. & Inst. Code § 14063 (West 2019). The Department is the single state agency authorized to administer the Medi-Cal program. Cal. Welf. & Inst. Code § 10740 (West 2019); Cal. Code Regs. tit. 22, § 50004(b)(1) (2019).

B. Medi-Cal Financing

The costs of the Medicaid program are generally shared between states and the federal government based on a set formula. 42 U.S.C. §§ 1396b(a) and 1396d(b) (2019). Except for certain covered populations or discrete service expenditures specified in 42 U.S.C. §§ 1396b or 1396d, the federal government reimburses medical assistance expenditures under California's State Medicaid Plan at a rate of 50%. When the Department makes expenditures for medical assistance covered under Medi-Cal, the Department claims the appropriate federal share of those costs at the appropriate federal medical assistance percentage. *Id.*

Federal Medicaid law permits states to finance the non-federal share of

Medicaid costs through several sources, including but not limited to:

> Charges on Health Care Providers. Federal Medicaid law permits states to (1) levy various types of charges – including taxes, fees, or assessments – on health care providers and (2) use the proceeds to draw down FFP (federal financial participation) to support the non-federal share of state Medicaid expenditures. These charges must meet certain requirements and be approved by CMS (Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services) for revenues from these charges to be eligible to draw down FFP. A number of different types of providers can be subject to these charges, including hospitals.

42 U.S.C. § 1396b(w) (2019); 42 C.F.R. §§ 433.50 – 433.74 (2019).

The Hospital Quality Assurance Fee (HQA Fee) is a charge imposed by the Department on non-exempt hospitals to finance the non-federal share of specified Medi-Cal costs. Cal. Welf. & Inst. Code § 14169.51(*l*) (West 2019). The quarterly HQA Fee imposed upon non-exempt hospitals has been collected by the Department in similar form since 2009. The collected HQA Fees are used to support Medi-Cal expenditures and maximize available federal participation for Medi-Cal costs. 42 U.S.C. § 1396b(w) (2019); 42 C.F.R. §§ 433.50 – 433.74 (2019).

C. Delivery of Medi-Cal Services

The vast majority of Medi-Cal benefits are delivered through one of two systems: (i) the fee-for-service system and (ii) the managed care plan system. Cal. Welf. & Inst. Code § 14016.5(b) (West 2019). In the fee-for-service system, Medi-Cal contracts with and pays health care providers (such as physicians, hospitals, and clinics) directly for covered services provided to Medi-Cal beneficiaries. *Id.*, §§ 14131 – 14138 (West 2019).

The Department also administers Medi-Cal through various managed care plans operated by public and private entities under contract pursuant to various statutory authorities. *See generally* Cal. Welf. & Inst. Code §§ 14087.3-14089.8, 14200-1499.77. (West 2019). In the managed care system,

the Department contracts with managed care plans to provide the vast majority of covered services for enrolled Medi-Cal beneficiaries within a fixed geographic location. *See generally id*. at §§ 14087.3 – 14087.48 (setting forth standards governing contracts between the Department and managed care providers) and § 14169.51(ab) (West 2019) (defining "managed health care plan" for purposes of the HQA Fee program).

Medi-Cal managed care enrollees may obtain non-emergency services from contracted providers – including hospitals – that accept payments from their health plans. The Department develops and pays an actuarially sound (capitation) rate per Medi-Cal beneficiary enrollee per month to contracted managed care plans. Cal. Welf. & Inst. Code § 14301.1 (West 2019).

D. Payments to Hospitals for Medi-Cal Services

The Department provides payments to licensed general acute care hospitals. These hospitals are divided into three general categories (private hospitals, designated public hospitals (county and University of California), and non-designated public hospitals (district hospitals) based on whether the hospital is privately or publicly owned, and who operates the hospital. *Id*. Debtors are private hospitals.

Hospitals may receive several types of payments based on their participation in Medi-Cal, including direct payments from the Department, managed care payments from managed care plans, and supplemental payments from both the Department and managed care plans.

Direct payments are payments to providers such as Debtors for providing covered services to Medi-Cal beneficiaries through the fee-for-service system. Cal. Welf. & Inst. Code §§ 14131 – 14138 (West 2019). Managed care payments are payments from managed care plans to providers (including hospitals such as Debtors) for services delivered to Medi-Cal beneficiaries enrolled in these plans.

Cal. Welf. & Inst. Code § 14301.1 (West 2019). The plans receive funds from the Department to pay the providers.

Quality assurance payments are supplemental payments, supported by the HQA Fee revenue and federal matching funds, providing additional payments to Medi-Cal hospitals to supplement the Department's direct fee-for service payments and the managed care plans' payments to hospitals, including Debtors. Cal. Welf. & Inst. Code § 14169.53(b) (West 2019).

E. Statutory Basis for Collection of HQA Fees

California Welfare and Institutions Code section 14169.50 sets forth the legislative purpose and intent for the HQA Fee program. "It is the intent of the Legislature that funding provided to hospitals through a hospital quality assurance fee be continued with the goal of increasing access to care and to improving hospital reimbursement through supplemental Medi-Cal payments to hospitals." Cal. Welf. & Inst. Code § 14169.50(b) (West 2019). "It is [also] the intent of the Legislature to impose a quality assurance fee to be paid by hospitals, which would be used to increase federal financial participation in order to make supplemental Medi-Cal payments to hospitals, and to help pay for health care coverage for low-income children." Cal. Welf. & Inst. Code § 14169.50(d) (West 2019). California Welfare and Institutions Code section 14169.52(h) provides the Department with the statutory remedy to recover the unpaid HQA Fee debt from Medi-Cal payments until the entire debt is recovered (recoupment).

F. Reimbursement of Medi-Cal Overpayments

Medi-Cal makes interim payments to an authorized Medi-Cal provider after it renders services and submits claims for payment. The Department later audits the claims for Medi-Cal payment submitted by Medi-Cal providers. Cal. Welf. & Inst.

Code §§ 14133 and 14170 (West 2019). In that regard, the Department is statutorily authorized to audit and review a provider's cost report[1] within three years after the close of the period covered by the report, or after the date of submission of the original or amended report by the provider, whichever is later. Cal. Welf. & Inst. Code § 14170(a)(1) (West 2019).

If the audit indicates any overpayment, the provider must reimburse Medi-Cal for the overpayment. The Department may begin liquidation of any overpayment to a Medi-Cal provider sixty days after issuance of the first Statement of Accountability or demand for repayment. Cal. Code Regs. tit. 22, § 51047 (2019).

A provider can appeal the Department's audit findings. Cal. Code Regs. tit. 22, §§ 51016-51048 (2019). A Medi-Cal provider is entitled to a formal administrative hearing on any disputed overpayment. Cal. Welf. & Inst. Code § 14171 (West 2019).

III. JURISDICTION

This court has jurisdiction over this appeal pursuant 28 U.S.C. § 1331.

FACTUAL BACKGROUND

I. DEBTORS' HQA FEE DEBT TO MEDI-CAL

Debtor St. Vincent Medical Center, as of September 24, 2019, has HQA Fee liabilities for Phase V (January 1, 207 through June 30, 2019) in the amount of $6,575,330.03. Decl. of Hanh Vo in Support of the Department's Emergency Mot., ¶¶ 3-8, ECF No. 3211-1. Debtor Seton Medical Center, as of September 24, 2019,

[1] Cost reports and other data submitted by Medi-Cal providers are submitted to the Department for the purpose of determining reasonable costs for Medi-Cal services or establishing rates of Medi-Cal payment. Cal. Welf. & Inst. Code § 14170(a)(1) (West 2019).

has outstanding HQA Fee liabilities for Phase V in the amount of $16,714,870.24. *Id*. Debtor St. Francis Medical Center, as of September 24, 2019, has HQA Fee liabilities for Phase V in the amount of $13,528,354.37. *Id*.

II. MEDI-CAL OVERPAYMENTS TO DEBTORS

For July 1, 2016, through June 30, 2017, the Department's Audits Section – Los Angeles of the Financial Audits Branch determined that St. Francis Medical Center was overpaid $25,176,471 by Medi-Cal, which includes an overpayment recovery of $24,911.003. Emergency Mot. 10, ECF No. 3211; Declaration of Kenneth K. Wang, Ex. 1 (Declaration of Ginn Sampson in Support of Creditor California Department of Health Care Services's Opposition to Debtors' Request to Bifurcate ¶ 4) (concurrently filed herewith). There are cost reports for other fiscal years that still need to be reviewed and/or audited by the Department.

Further, for July 1, 2016, through June 30, 2017, the Department has determined, based on retroactive claim adjustments, that Seton Medical Center was overpaid $4,205.25 by Medi-Cal for hospital operations. Decl. of Hanh Vo in Support of the Dept.'s Supp. Obj., ¶ 16, ECF No. 3043-1.

Also, St. Francis Medical Center was overpaid by Medi-Cal in the amount of $662,327.67 in supplemental reimbursements under the Supplemental Reimbursement for Construction Renovation Reimbursement Program. Declaration of Shiela Mendiola, ECF No. 3043-2.

III. DEBTORS CONTINUE AS MEDI-CAL PROVIDERS POST PETITION

Since the Petition Date, Debtors have continued to provide Medi-Cal services, have continued to submit claims to Medi-Cal for payment, and have continued to receive millions of dollars in Medi-Cal payments. In other words, despite their bankruptcy filings, Debtors have remained in the Medi-Cal system, enjoying Medi-Cal provider benefits, such as direct payments from the Department, managed care payments from managed care plans, and supplemental payments

from both the Department and managed care plans.

ARGUMENT

I. THE BANKRUPTCY COURT ERRED IN REJECTING THE PROVIDER AGREEMENTS AS EXECUTORY CONTRACTS

The issue on appeal is whether Debtors' Medi-Cal Provider Agreements are executory contracts that must be assumed and assigned.

The Bankruptcy Code does not define the term "executory contract"; however, the legislative history of 11 U.S.C. § 365 leaves no doubt that an executory contract is one "in which neither side has fully performed at the commencement of bankruptcy." *In re Monsour Medical Center*, 8 B.R. 606, 612 (Bankr. W.D. Pa. 1981), aff'd 11 B.R. 1014 (W.D. Pa. 1981) (citing Fogel, *Executory Contracts and Unexpired Leases in the Bankruptcy Code*, 64 Minnesota Law Review 341, 344 (1980). The legislative history provides:

> Though there is no precise definition of what contracts are executory, it generally includes contracts on which performance remains due to some extent on both sides. A note is not usually an executory contract if the only performance that remains is repayment. Performance on one side of the contract would have been completed and the contract is no longer executory.

Id.

In other words, executory contracts include contracts where, to some extent, performance remains due from both parties. *In re Holland Enterprises, Inc*. (*In re Holland*), 25 B.R. 301 (Bankr. E.D. N.C. 1982) (citing *In re Rovine Corp*., 5 B.R. 402, 404 (W.D. Tenn. 1980).

A. Mutual Consideration for the Provider Agreement Included Successor Joint and Several Liability

Provider Agreements are enforceable contracts because of the mutual consideration.

To become entitled to receive Medi-Cal payments as Medi-Cal providers, the Debtors were required to enter into Provider Agreements with the Department. *In re Gardens Regional Hospital and Medical Center, Inc*. (*Gardens*), 569 B.R. 788,

792 (Bankr. C.D. Cal. 2017). Debtors' eligibility to participate in the Medi-Cal program is conditioned upon their consent to the terms of the Provider Agreements. *Gardens*, 569 B.R. at 796-97. In that regard, the Agreements specifically emphasize:

> **AS A CONDITION FOR PARTICIPATION OR CONTINUED PARTICIPATION AS A PROVIDER IN THE MEDI-CAL PROGRAM, PROVIDER AGREES TO COMPLY WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, AND WITH ALL OF THE TERMS AND CONDITIONS INCLUDED ON ANY ATTACHMENT(S) HERETO, WHICH IS/ARE INCORPORATED HEREIN BY REFERENCE.**

Decl. of Hanh Vo in Support of the Dept.'s Supp. Obj., Exs. 1 – 4 (Provider Agreements) (original emphasis), ECF No. 3043-1.

The bankruptcy court erred in assuming that the Provider Agreement is not an executory contract because it lacked mutual consideration. Mem. of Decision 7, ECF No. 3146. According to the bankruptcy court, the obligations in the Provider Agreements merely restate the Debtors' pre-existing obligations. *Id*. at 6-7. An agreement to comply with applicable law, bankruptcy court states, is a gratuitous promise, which does not provide consideration to make a contract enforceable. *Id*. 7, ECF No. 3146.

The order is incorrect because there is mutual consideration. As the bankruptcy court recognized in *Gardens*, a Provider Agreement entitles a health care professional or entity to Medi-Cal payment benefits. However, the Department, on behalf of Medi-Cal, does not have any pre-existing duty to authorize any health care professional or entity to become Medi-Cal providers or any pre-existing duty to execute the Provider Agreement with any health care professional or entity. Thus, the Department's agreement to execute the Provider Agreement with the Debtors to authorize them to become Medi-Cal Providers is sufficient consideration by the Department. There is also sufficient consideration by the Debtors. Under the Agreements, the Debtors receive the benefit of being

able to provide care to Medi-Cal beneficiaries and receive payment in the tens of millions of dollars. Consequently, there is an exchange of consideration sufficient to support the Department's position that the Provider Agreements are enforceable contracts.

The bankruptcy court's assumption also fails given the parties' consideration indicated in the Provider Agreements. The consideration includes the Debtors' agreement to successor joint and several liability in order to be approved as Medi-Cal providers and to receive Medi-Cal payment benefits. The Department made absolutely clear through its briefings below that the Debtors, by executing the Provider Agreements, agreed to every term and provision of the Provider Agreements. An explicit provision of the Provider Agreements mandated the successor joint and several liability:

> Assignability. Provider agrees that it has no property right in or to its status as a Provider in the Medi-Cal program or in or to the provider number(s) assigned to it, and that Provider may not assign its provider number for us as a Medi-Cal provider, or any rights and obligations it has under this Agreement except to the extent purchasing owner is joining this provider agreement with successor liability with joint and several liability.

Decl. of Hanh Vo in Support of the Dept.'s Supp. Obj., ¶ 7, Ex. 5 at 8, ECF No. 3043-1.

To the Department's knowledge, no federal or state statute or regulation mandates joint and several successor liability by the purchasing owner. As such, this significant provision was a condition imposed solely by the Department to which the Debtors must agree in order to contract with the Department, for enrollment in Med-Cal, and for receipt of Medi-Cal payment benefits. As such, there was consideration between the Department and the Debtors for the Provider Agreements to be enforceable contracts. Accordingly, the bankruptcy court erred in ruling that Provider Agreements are not enforceable contracts.

B. Provider Agreements Are Executory Contracts Because the Contracting Parties Have Mutual Obligations

Executory contracts are those in which performance remains due from both parties. *In re Holland,* 25 B.R. 301 (citing *In re Rovine Corp.*, 5 B.R. 402, 404 (W.D. Tenn. 1980). The bankruptcy court reasoned that Provider Agreements are not executory contracts in that they "impose no obligations upon the [Department]." Mem. of Decision 6, ECF No. 3146. The bankruptcy court added that the "only obligations spoken of in the Provider Agreements pertain to Debtors." *Id*. at 6 -7.

The bankruptcy court mistakenly concluded that the Provider Agreements only reference the Debtors' obligations. Mem. of Decision 6, ECF No. 3146. The Department's obligation to pay the Debtors, as Medi-Cal providers, is plainly stated in the Agreements. Paragraph 22 of the Agreement states that "payment received from the [Department] shall constitute payment in full. Decl. of Hahn Vo, Ex. 4 at 4, ECF No. 1353-1. Absent the Department's obligation to pay, the Debtors would not have entered into the Provider Agreements. There was no expectation that the Debtors would provide free services to Medi-Cal beneficiaries.

Also, the Department's obligation to pay Medi-Cal providers, such as the Debtors, is incorporated by reference into the Provider Agreements. The Provider Agreement, if unable to rely upon the shorthand of incorporation by reference, including the Department's obligations, "will swell in length from less than 10 pages to hundreds of pages." *Gardens*, 569 B.R. at 799. This is especially true given the fact that hospitals that are Medi-Cal providers may receive several types of payments based on their participation in Medi-Cal, including direct payments from the Department, managed care payments from managed care plans, and supplemental payments from both the Department and managed care plans.

C. Case Law Affirms that Medi-Cal Providers Have No Statutory Entitlement to Bill Medi-Cal

Participation in Medi-Cal allows providers to continue to bill and be paid by

Medi-Cal for services, as well as receive non-direct service payments, such as supplemental payments. These additional payments to Medi-Cal hospitals supplement the Department's direct fee-for service payments and the managed care plans' payments to hospitals, including Debtors. Cal. Welf. & Inst. Code § 14169.53(b) (West 2019).

The bankruptcy court erroneously reasoned that the Medi-Cal Provider Agreements are akin to licenses because the Debtors have a statutory entitlement to provide services and to receive reimbursement for such services. Memo. of Decision 8-9, ECF No. 3146. The bankruptcy court's analysis is unsupported because it only considered reimbursement for services provided. As authorized Medi-Cal providers pursuant to the Provider Agreements, the Debtors also receive tens of millions of dollars in supplemental payments under the HQA Fee program, which have no direct relationship to the service provided. The statutes do not set out any exclusive conditions under which the supplemental benefits must be paid or denied. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Arnett v. Kennedy*, 416 U.S. 134 (1974).

Further, the bankruptcy court ignored the fact that the disputed issue is about whether the Debtors have any statutory entitlement to remain in Medi-Cal such that they can transfer that right to Buyer SGM through the sale, not whether Debtors have any statutory entitlement to receive payment for services provided. Debtors do not have any statutory right to remain as Medi-Cal providers. In that regard, the Ninth Circuit has held that Medi-Cal providers do not have any ownership in their Medi-Cal provider status. Thus, they do not have any statutory entitlement to continue to remain in Medi-Cal and to continue to bill
Medi-Cal, which is the intended consequence of the transfer of Medi-Cal Provider Agreements from the Debtors to Buyer SGM.

In *Erickson v. United States Department of Health and Human Services*, the

district court granted an injunction to plaintiffs, a Medicare provider, to prohibit the Secretary of Health and Human Services from excluding them from federally-funded health care programs. On appeal, the Ninth Circuit followed the reasoning of the First and Tenth Circuits in *Koerpel v. Heckler*, 797 F.2d 858, 863-65 (10th Cir. 1986) and *Cervoni v. Secretary of Health, Education and Welfare*, 581 F.2d 1010 (1st Cir. 1978) and held that plaintiffs were not entitled to the continued participation in Medicare/Medicaid programs. Plaintiffs failed to show entitlement, including statutory entitlement, for continued participation in those programs; therefore, they have no property interest in continued participation in those programs. *Erickson v. United States Department of Health and Human Services*, 67 F. 3d 858, 862 (9th Cir. 1995). Similarly, the California Court of Appeal in *Lin v. State of California*, 78 Cal. App. 4th 931 (Cal. Ct. App. 2012) held that providers of Medicare and Medicaid services have no protected interests in continued participation in those programs. *Id*., at 935. In fact, the California Court of Appeal concluded that "the relationship between a Medi-Cal provider and the Department is 'contractual in nature.'" *Mednik v. State Department of Health Care Services* 175 Cal. App. 4th 631, 642 (Cal. Ct. App. 2009).

Consistent with the *Erickson* holding, the Debtors' Provider Agreements explicitly assert that no property interests exist in or to the Debtors' providers' status. Essentially, the Debtors have no property interest, including any purported statutory entitlement, in their Provider Agreements. Instead, the Agreements expressly state that any rights or obligations associated with the Provider Agreements may only be assigned and assumed with successor joint and several liability. Decl. of Hanh Vo in Support of the Dept.'s Supp. Obj. Ex 5 ¶ 37 at 8, ECF No. 3043-1.

Accordingly, contrary to the bankruptcy court's erroneous analysis, the Provider Agreements do not provide the Debtors with any statutory entitlement to

continue to remain in Medi-Cal and to continue to bill Medi-Cal, such that they can transfer such purported statutory entitlement to Buyer SGM through the sale. Mem. of Decision 8, ECF No. 3146.

D. *PAMC* and *Guzman* Do Not Provide the Debtors with a Statutory Right to Remain in Medi-Cal After the Sale

The bankruptcy court cited *PAMC, Ltd., v. Sebeli*us, 747 F.3d 1214 (9th Cir. 2014) and *Guzman v. Shewry*, 552 F.3d 941 (9th Cir. 2009) for the proposition that Medi-Cal Provider Agreements are not contracts because, upon joining Medicare, the hospitals receive a statutory entitlement, not a contractual right, to receive reimbursement services provided. Mem. of Decision 5-6, ECF No. 3146.

The bankruptcy court misinterpreted and misapplied *Guzman*. The relevant principle from that case is that a health care provider does not have a right to contract with the governmental assistance programs, such as Medi-Cal. In *Guzman*, Guzman argued that his temporary suspension denied him the ability to receive reimbursement for treating Medi-Cal beneficiaries; thus, he had been deprived of his right to contract with the State. *Guzman v. Shewry*, 552 F.3d at 954. Based upon the alleged deprivation of his right to contract with the State, Guzman further argued that he was deprived of the procedural guarantees of the Due Process Clause. *Id*. Guzman analogized his temporary suspension to bar from government contract bidding. *Id*.

The *Guzman* Court rejected the claimed liberty interest, ruling that one does not have a right to contract with the State to participate in its government assistance programs, "designed to provide benefits for a third party." *Id*. It was only in the context of whether Guzman had any guaranteed right to contract with the State that the Ninth Circuit noted that Guzman was entitled to receive payment for the services that he had already provided. *Guzman v. Shewry*, 552 F.3d at 955. Here, the issue is not whether the Debtors have any right to contract with Medi-Cal under the Provider Agreement. Rather, it is about whether the Debtors' Provider

Agreements constitute executory contracts in the bankruptcy context.

As for *PAMC*, it is entirely distinguishable. In that case, the provider failed to timely submit its quality data and was subject to a two percent reduction in its annual payment update. *PAMC, Ltd., v. Sebeli*us, 747 F.3d at 1216. The Medicare agreement did not include any provision regarding this issue. PAMC requested equitable relief. The Secretary of Centers for Medicare and Medicaid Services argued that she had published program procedures in the Federal Register and on the QualityNet Exchange website. *Id*. To resolve the disputed issue, the Ninth Circuit applied the regulatory scheme. The application of the regulatory scheme to resolve a disputed issue, in *PAMC*, does not negate the contractual nature of the Medi-Cal Provider Agreements.

Accordingly, the caselaw relied upon by the bankruptcy court does not demonstrate that the Debtors have a statutory entitlement to bill Medi-Cal.

II. THE DEBTORS CANNOT SELL THEIR AGREEMENT UNDER 11 U.S.C. § 363(F)

Aside from the fact that the Debtors have no property interests to continue to participate in the Medi-Cal system, 11 U.S.C. § 363(f) does not allow the Debtors to sell their Provider Agreements as property, free and clear of any debt or successor liability. Under 11 U.S.C. § 363(f), property can be sold free and clear of any interest in that property of an entity other than the estate, only if:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which property is to be sold is greater than the aggregate value of all liens on such property;

///

(4) such interest is in bona fide dispute; or
(5) such entity can be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Here, *Erickson* and the Provider Agreements specify that Medi-Cal providers, such as the Debtors, have no ownership interest in their Medi-Cal provider status. Given the binding Ninth Circuit precedent, the bankruptcy court mistakenly applied a broader definition of "interest . . . in property" to include "monetary obligations arising from the ownership of the property." Mem. of Decision 9, ECF No. 3146. The Debtors cannot meet the first through fourth criteria because they have no property ownership in their Medi-Cal provider status. Thus, they cannot have any monetary interest to sell based upon an agreement where there is no property interest.

For the fifth criteria, aside from the reasons above, the Department cannot be compelled to accept a money satisfaction in exchange for its rights to prevent a sale of the Debtors' Medi-Cal provider status or the Debtors' benefits, duties and obligations under the Agreements. There is no evidence that the Department may be compelled for less than the full payment of the debt. "By its express terms, Section 363(f)(5) permits lien extinguishment if the trustee can demonstrate the existence of another mechanism by which a lien could be extinguished without full satisfaction of the secured debt." *In re Terrace Chalet Apartments, Ltd.*, 159 B.R. 821, 829 (E.D. Ill, 1993). This especially holds true given the Department's right to recoup the Debtors' Medi-Cal debt on the Debtors' Provider Agreements, even after the sale. *Gardens*, 569 B.R. at 794-800. Buyer SGM will assume the Debtors' Provider Agreements after the sale. Equitable recoupment does not owe its legitimacy to anything in the Bankruptcy Code. *Sims v. United States Dept. of Health and Human Services*, 224 F. 1008, 1011 (9th Cir. 2000). Accordingly, the

Department, by equitable recoupment, can and will recoup Debtors' Medi-Cal debt on their Provider Agreements, even after the sale. *Gardens*, 569 B.R. at 794-800.

Accordingly, the Debtors cannot sell their Provider Agreements, free and clear of any debt under 11 U.S.C. § 363(f). The Provider Agreements can only be assumed and assigned with successor liability.

III. THIS BANKRUPTCY COURT'S RULING WILL CAUSE SEVERE, NEGATIVE RAMIFICATIONS

Bankruptcy courts should not be a haven for wrongdoers. *In re Berg*, 230 F.3d 1165, 1167 (9th Cir. 2000); *Lockyer v. Mirant Corp*., 398 F.3d 1098, 1107 (9th Cir. 2005). Similarly, bankruptcy courts should not be a mechanism through which a debtor is allowed to receive more favorable treatment, one that is strictly foreclosed for individuals or entities who are not in bankruptcy. Here, Medi-Cal providers, by the operations of their Provider Agreements, are required to transfer their Provider Agreements with successor joint and several liability. Yet, the bankruptcy court's ruling undermines that requirement and provides the Debtors with preferential treatment over Medi-Cal providers that are not in bankruptcy. Aside from the law, as a matter fairness and equity, Debtors should not be permitted to divorce the benefits of receiving millions of dollars from the burdens of their Provider Agreements.

As explained above, Medi-Cal makes interim payments to an authorized Medi-Cal provider after it renders services and submits claims to Medi-Cal for payment. The Department later audits the claims for Medi-Cal payment submitted by Medi-Cal providers. Cal. Welf. & Inst. Code §§ 14133 and 14170 (West 2019). The successor joint and several liability in the Provider Agreements comports with the nature and operations of the Medi-Cal system. A Medi-Cal provider, such as the Debtors, is only required to submit cost reports after the close of a fiscal year. Accordingly, the Debtors have yet to submit cost reports for the current fiscal year to the Department under California Welfare and Institutions Code section 14170,

which ends in June 2020.

Absent successor joint and several liability provided by 11 U.S.C. § 365 and given the bankruptcy court's ruling to authorize the Debtors to sell their Provider Agreements free and clear of the Department's claims, the Department will be foreclosed from recovering any Medi-Cal overpayments that are discovered after the sale solely because of the operations of the Medi-Cal system relative to the timing of the bankruptcy proceedings.

IV. DEBTORS' PROVIDER AGREEMENTS REQUIRE SUCCESSOR LIABILITY BY THE BUYER

Debtors and Buyer SGM cannot be allowed to divorce the benefits from the burdens of the Provider Agreements. Under the APA, SGM intends to "succeed to the quality history associated with the . . . Medi-Cal provider agreements." APA § 8.7, ECF No. 1279. Buyer SGM should not allowed to assume the benefits of the Provider Agreements without assuming the burdens thereon. In addition, if Buyer SGM does not assume the Debtors' obligations under the Provider Agreements, it should be barred from receiving any Hospital Quality Assurance Program payments (supplemental payments), after the sale, pursuant to the Debtors' Provider Agreements. APA § 1.9(j), ECF No. 1279. Similarly, under the Court's ruling, SGM must also be foreclosed from collecting on Debtors' Medi-Cal payment receivables after the sale. APA § 1.7(b), ECF No. 1279.

A party must accept the contract as a whole, meaning that a party cannot choose to accept the benefits of an agreement and reject its burdens to the detriment of the other party to the agreement. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985) (citing *In re Holland*, 25 B.R. 301). It is axiomatic that an assumed contract under 11 U.S.C. § 365 is accompanied by its provisions and conditions. *In re Holland*, 25 B.R. at 303 (citing *Atchison, Topeka & Santa Fe Ry Co. v. Hurley*, 153 F. 403 (8th Cir. 1907), aff'd 213 U.S. 126, 29 S.

Ct. 466, 53 L. Ed. 729 (1909)). "Assumption or rejection of an executory contract requires an all-or-nothing commitment going forward, and then a debtor cannot assume part of an executory contract in the future while rejecting another part." *In re St. Mary Hospital*, 89 B.R. 503, 509 (E.D. Pa. 1988).

An executory contract must be assumed or rejected *in toto*. *In re Holland*, 25 B.R. at 303. "To hold otherwise, would construe the bankruptcy law as providing a debtor in bankruptcy with greater rights and powers under a contract than the debtor had outside the bankruptcy." *Id*. (citing *In re Nashville White Trucks, Inc*., 5 B.R. 112, 117 (Bankr. M.D. Tenn.)).

> The Court remains cognizant of the legislative purpose behind section 365. This provision vests the bankruptcy court with a unique power designed to facilitate the rehabilitation of debtors. Nevertheless, a debtor may not retreat to this provision, derived from the inherent equitable powers of the bankruptcy courts, to avoid an obligation while it enjoys a benefit which arises in conjunction with that obligation.

In re Holland, 25 B.R. at 303.

Accordingly, if Buyer SGM assumes the Provider Agreements, then Buyer SGM will be held jointly and severally liable for any debt owed by the Debtors to the Department, including unpaid HQA Fees and any Medi-Cal overpayments to the Debtors, as Debtors' Provider Agreements specifically mandate. In addition, under the Provider Agreements, Buyer SGM will be subject to Department's recoupment for any unpaid HQA Fees and Medi-Cal overpayments owed by Debtors. 11 U.S.C. § 365. "It is hornbook law that a debtor cannot assume the benefits of an executory contract while rejecting the burdens." *In re Tidewater Memorial Hospital, Inc*., 106 B.R. 876, 884 n.9 (Bankr. E.D. Va. 1989) (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d at 1311).

If the Debtors are allowed to sell, transfer, and assign the Provider Agreements without requiring the Debtors to pay their HQA Fee liabilities or Buyer SGM to assume those liabilities on joint and several liability, then the Debtors and Buyer SGM would be allowed to divorce the benefits from the burdens of the

Agreements and undermine the HQA Fee system. Debtors and Buyer SGM would receive the benefits of the Debtors' Provider Agreements including Medi-Cal service payments as well as quality assurance payments, while disregarding the obligations of the same Provider Agreements, including successor liability for any debt incurred by the Debtors to the Department.

V. THE DEPARTMENT REQUESTS AN EXPEDITED APPEAL

To expedite the appeal, the Department hereby requests an order expediting the appeal and setting an early hearing date, pursuant to Federal Rules of Appellate Procedure Rule 2.

An expedited appeal should provide an appellate review and decision on the transfer of the Provider Agreements.

CONCLUSION

Given the foregoing, this Court should reverse the bankruptcy court's ruling and rule that the Provider Agreements are executory contracts that must be assumed by the Debtors and assigned to Buyer SGM.

Dated: December 9, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JENNIFER M. KIM
Supervising Deputy Attorney General

/s/ Kenneth Wang
KENNETH K. WANG
Deputy Attorney General
Attorneys for Appellant
California Department of Health Care Services