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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

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

Debtors and Debtors In Possession.

XAVIER BECERRA

APPELLANT(S)

v.

COUNTY OF SANTA CLARA, VERITY HEALTH SYSTEM OF CALIFORNIA, INC., OFFICIAL COMMITTEE OF UNSECURED CREDITORS, *et al.*

APPELLEE(S).

DISTRICT COURT CASE NUMBER:
2:19−cv−133−DMG

BANKRUPTCY COURT CASE NUMBER:
2:18−bk−20151−ER

ADVERSARY CASE NUMBER:
N/A

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' JOINDER IN APPELLEE VERITY HEALTH SYSTEM OF CALIFORNIA, INC.'S MOTION TO DISMISS APPEAL OF CALIFORNIA ATTORNEY GENERAL [DOCKET NO. 36]

Hearing:
Date: **April 15, 2019**
Time: **9:00 am**
Location: **Courtroom 8C, 350 W. 1st St. Los Angeles, CA 90012**

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The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee") appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (the "Debtors"), hereby files this joinder (the "Committee Joinder") in *Appellee Verity Health System Of California, Inc., et al.'s Motion to Dismiss the Appeal Of the California Attorney General As Moot* (the "Dismissal Motion") [District Court Docket No. 36], and in support thereof represents as follows:

JOINDER

1. The Committee hereby joins in the Dismissal Motion. The Committee, like the Debtors, believes that the appeal (the "Appeal"), which was filed by the California Attorney General (the "AG") and relates to the sale (the "Sale") of two of the Debtors' hospitals (the "Hospitals") to the County of Santa Clara (the "County"), is statutorily and equitably moot.

2. **Statutory Mootness.** The Appeal is statutorily moot under 11 U.S.C. § 363 because (i) the Sale to the County closed on February 28, 2019 (the "Closing"); (ii) the Bankruptcy Court held that the County was a good faith purchaser under § 363(m); and (iii) no stay pending disposition of the Appeal was granted to the AG. *See Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570, 576 (9th Cir. 1998) (under 11 U.S.C. § 363(m), "[w]hen a sale of assets is made to a good faith purchaser, it may not be modified or set aside unless the sale was stayed pending appeal").

3. Section 363(m) effectively moots any challenge to a section 363 sale that seeks to affect the validity of the sale so long as the purchaser acted in good faith and the appellant failed to obtain a stay of the sale. Here, the County, as the purchaser, has been found to have acted in good faith, and the no stay has been granted to the AG, so any reversal or modification of the Sale Order on appeal will not affect its validity, thereby rendering the Appeal statutorily moot.

4. **Equitable Mootness**. The Appeal is also equitably moot because there has been a comprehensive change of circumstances and complex transactions have been entered into that cannot be unwound. As set forth in greater detail in the Dismissal Motion, among other things, (i) the Sale closed and the County is the legal owner of the Hospitals; (ii) the County now operates the Hospitals; and (iii) more than $235 million has changed hands, including more than $33 million that has been paid to third parties in reliance on the closing of the Sale. (Dismissal Motion at 14-15.)

5. Moreover, as the Debtors have pointed out, the Hospitals provide critical services to low-income, high-need communities, and the Debtors and the County have made every effort to seamlessly transfer these operating Hospitals to ensure continued patient care. (*Id.* at 1-2.) As a result of the fact that no stay of the Sale was granted pending disposition of the Appeal, the "eggs are scrambled," and appellate relief would be highly disruptive or impossible to implement.

6. Courts consider four factors when making a determination regarding equitable mootness:

(i) whether and how a stay was sought; (ii) whether substantial consummation of the sale has occurred; (iii) the effect a remedy may have on third parties not before the court; and (iv) whether the bankruptcy court can fashion effective and equitable relief without completely knocking the props out from under the sale and thereby creating an uncontrollable situation for the bankruptcy court. *In re Thorpe Insulation Co.*, 677 F.3d 869, 881 (9th Cir. 2012) (cited and applied by *In re Ahn*, 705 Fed. Appx. 581, 582 (9th Cir. 2017) ("[e]quitable mootness concerns whether changes to the status quo following the order being appealed make it impractical or inequitable to unscramble the eggs.")).

7. Applying these factors in the sale context, courts focus on whether there has been a "'comprehensive change of circumstances . . . so as to render it inequitable for this court to consider the merits of the appeal,'" including the fact that third parties would be unreasonably adversely affected by an appeal. *In re Tenorio*, 2018 WL 989691, at *6 (B.A.P. 9th Cir. Feb. 8, 2018) (citing *In re Thorpe*, 677 F.3d at 881); *In re Gotcha Int'l L.P.*, 311 B.R. 250, 254 (B.A.P. 9th Cir. 2004)). In other words, "[a]n appeal is equitably moot if the case presents 'transactions that are so complex or difficult to unwind' that 'debtors, creditors, and third parties are entitled to rely on [the] final bankruptcy court order.'" *In re Tenorio*, 2018 WL 989691 at *6.

8. Here, there has plainly been a comprehensive change of circumstances, and complex transactions have been consummated that cannot be readily unwound, which, taken together, render the Appeal equitably moot. Not only

does the County now own and operate the Hospitals after the Closing of the Sale, (i) over $ 33 million has been paid by both the Debtor and the County to third parties (including $16 million to the State of California); (ii) the Hospitals' employees are now employed by the County (or have been terminated); (iii) the Debtors' CBAs are now terminated; and (iv) the Debtors, the County, and third parties diligently worked for months on consummating the Sale.

9. For all the foregoing reasons, the Dismissal Motion should be granted. The Chapter 11 Cases were filed because the Debtors are not financially capable of continuing to fund the losses generated by the operations of the Hospitals. If the Sale is not consummated in a timely manner, or its consummation remains subject to future unwinding, the likely outcome will be that the Hospitals will be shut down and the Debtors' estates liquidated. Such an outcome would not be in anyone's best interest—not the Debtors, not the creditors, and not the larger Santa Clara community, including, among others, its many patients, physicians, nurses, and other employees.

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CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court (i) grant the Dismissal Motion in its entirety; and (ii) grant such other and further relief as may be just and proper.

DATED: March 20, 2019

MILBANK LLP

/s/ Gregory A. Bray
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