

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
PATRICK C. MAXCY (*Pro Hac Vice*)
patrick.maxcy@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-20171-ER

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DEBTORS' NOTICE OF MOTION AND MOTION
TO APPROVE TERMS OF A PRIVATE SALE OF
CLINICS TO UNION SQUARE HEARING, INC. IN
ACCORDANCE WITH SECTIONS 363(b) AND (f) OF
THE BANKRUPTCY CODE; DECLARATION OF
RICHARD G. ADCOCK IN SUPPORT THEREOF**

HEARING:

Date: June 19, 2019

Time: 10:00 a.m.

Place: Courtroom 1568

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

1 **PLEASE TAKE NOTICE** that, at **10:00 am (prevailing Pacific Time), on June 19, 2019**,
2 before the Honorable Ernest M. Robles, in Courtroom 1568 of the United States Bankruptcy Court
3 for the Central District of California, Roybal Federal Building, 255 E. Temple Street, Los Angeles,
4 CA 90012, Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated
5 debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively,
6 the “Debtors”), shall move for the entry of an order approving that certain Asset Purchase
7 Agreement between the Debtors, Verity Medical Foundation (“VMF”) and VHS, Dr. Matthew D.
8 Mingrone, M.D. (the “Doctor”) and Union Square Hearing, Inc., a California general corporation
9 (“Buyer”), substantially in the form of the Asset Purchase Agreement (the “APA”) attached to the
10 annexed Memorandum as **Exhibit 1**.

11 **PLEASE TAKE FURTHER NOTICE** that the Debtors file this Motion, pursuant to 11
12 U.S.C. § 363, seeking an order (i) approving the APA and (ii) authorizing VMF to sell the assets of
13 VMF’s medical clinics (the “Clinics”), located at (i) 2504 Samaritan Drive, Suite 20, San Jose,
14 California and (ii) 450 Sutter Street, Suite 1404, San Francisco, California, (as more specifically
15 defined in the Asset Purchase Agreement, the “Purchased Assets”) free and clear of any interest in
16 such Purchased Assets to Buyer.

17 Buyer is prepared to purchase the Purchased Assets by way of a private sale, which will
18 generate funds for the estates, alleviate a materially significant monetary burden to the estates and
19 allow the Clinics to continue to serve patients in the community. Buyer intends to continue
20 operating the Clinics as a going concern.

21 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of Motion
22 and Motion and the attached Memorandum of Points and Authorities, the *Declaration of Richard*
23 *G. Adcock in Support of First-Day Motions*, filed August 31, 2018 (the “First-Day Declaration”)
24 [Docket No. 8] and the attached Declaration of Richard G. Adcock (the “Adcock Declaration”) in
25 support of this Motion.

26 **PLEASE TAKE FURTHER NOTICE** that any party opposing or responding to the
27 Motion must file a response (the “Response”) with the Bankruptcy Court and serve a copy of it upon
28 the moving party and the United States Trustee not later than 14 days before the date designated for

1 the hearing. A Response must be a complete written statement of all reasons in opposition to the
2 Motion or in support, declarations and copies of all evidence on which the responding party intends
3 to rely, and any responding memorandum of points and authorities.

4 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(h), the failure to file
5 and serve a timely objection to the Motion may be deemed by the Court to be consent to the relief
6 requested herein.

7
8 Dated: May 24, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
PATRICK C. MAXCY

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10
11 By /s/ Tania M. Moyron
12 Tania M. Moyron

13 Attorneys for the Chapter 11 Debtors and
14 Debtors In Possession
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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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

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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

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Debtors, by and through their undersigned counsel, hereby file this Memorandum of Points and Authorities in support of their motion (the “Motion”), pursuant to 11 U.S.C. § 363,¹ for the entry of an order (i) approving the Asset Purchase Agreement (the “APA”) between Verity Medical Foundation (“VMF”), Verity Health System of California, Inc. (“VHS”), Union Square Hearing, Inc, a California general corporation (“Buyer”) and Dr. Matthew D. Mingrone, M.D. (the “Doctor”) (collectively, the “Parties”), a copy of which is attached hereto as **Exhibit 1**, and (ii) authorizing VMF to sell all assets of the Clinics (defined herein) (as more specifically defined in the APA, the “Purchased Assets”) free and clear of any interest in such Purchased Assets. For the reasons set forth below, the Debtors respectfully request that the Court grant the Motion.

II.

JURISDICTION AND VENUE

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory predicates for the relief requested herein are § 363 of the Bankruptcy Code and Rules 2002 and 6004.

III.

BACKGROUND

A. General Background

1. On August 31, 2018 (“Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11. Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all “Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. 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

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that operate six acute care hospitals, O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastsides (collectively, the "Hospitals") and other facilities in the state of California. First-Day Decl., at 4, ¶ 11. Seton Medical Center and Seton Medical Center Coastsides operate under one consolidated acute care license. *Id.*

3. At the inception of the Cases, VHS, the Hospitals, and their affiliated entities (collectively, "Verity Health System") operate as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. First-Day Decl., at 4, ¶ 12.

4. Each of the Debtors is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "IRC"), except for Verity Holdings, LLC, DePaul Ventures, LLC, and DePaul Ventures - San Jose Dialysis, LLC. First-Day Decl., at 6, ¶ 21.

5. On September 17, 2018, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors in these cases. [Docket No. 197.]

6. Debtor VMF, incorporated in 2011, is a medical foundation, exempt from (a) licensure under California Health & Safety Code § 1206(l), and (b) federal income taxation as an organization described in section 501(c)(3) of the IRC. First-Day Decl., at 5, ¶ 14. VMF contracts with physicians and other healthcare professionals to provide high quality, compassionate, patient-centered care to individuals and families throughout California. *Id.* VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by the Hospitals. *Id.*

7. Until January 31, 2019, VMF operated two clinics (the "Clinics") located at (i) 2504 Samaritan Drive, Suite 20, San Jose, California and (ii) 450 Sutter Street, Suite 1404, San Francisco, California. Adcock Declaration, ¶ 4. The Clinics were operated pursuant to a Physician Employment Agreement between Doctor and non-debtor Verity Medical Group, P.C. ("VMG"). *Id.*

1 By separate agreement, VMG and Doctor entered an agreement for termination of the Physician
2 Employment Agreement and agreements related thereto effective as of January 31, 2019. *Id.*
3 Following Doctor's separation from its affiliation with VMG and the Sellers, Buyer seeks to
4 purchase certain assets used in the continued operation of the Clinics. *Id.*

5 **B. Summary of APA**

6 8. The APA provides that the Buyer will purchase the Purchased Assets of the Clinics,
7 by way of private sale and subject to Bankruptcy Court approval. Adcock Declaration, ¶ 5. The
8 Buyer intends to utilize the Purchased Assets in the continued operation of the Clinics. *Id.* The
9 principal terms of the APA can be summarized as follows:²

- 10 a. VMF agrees to sell to Buyer and Buyer agrees to purchase the certain assets (the
11 "Purchased Assets") located at the Clinics, and to enter into certain related
12 agreements. The Purchased Assets include all furniture, fixtures, equipment, medical
13 records and inventory of Seller located at the Clinics. The parties acknowledge that
14 Purchased Assets shall not include any accounts, notes or other amounts receivable
15 or recorded or otherwise accrued by Seller prior to and as of the Closing Date as
16 accounts, notes or other amounts receivable from payors, patients, physicians or any
17 other Person (whether or not billed);
- 18 b. Buyer agrees to pay an aggregate purchase price for the Purchased Assets of
19 \$30,000.00, plus the amount of any security deposits held by the lessors under the
20 Leases (defined below) or any equipment leases assumed pursuant to the APA. The
21 Purchase Price is held by VMF in the form of a certified check, and VMF shall
22 deposit the certified check upon Closing.
- 23 c. Buyer, Doctor and VMG entered into an agreement for termination of that certain
24 Physician Employment Agreement, dated December 4, 2017, between Doctor and
25 VMG (the "PEA") without liability to the parties thereto, and (b) any other
26 agreements between Buyer and Doctor, on the one hand, and any VHS affiliate, on
27 the other hand, including all medical directorship agreements (collectively, with the
PEA, the "Terminated Agreements") have been terminated by mutual agreement and
without liability to the parties thereto, and the Terminated Agreements shall therefore
have no further force and effect.
- d. Buyer, Doctor and VMF have agreed to Buyer's use and enjoyment of the Purchased
Assets pending Bankruptcy Court approval of the sale transaction.
- e. The parties acknowledge that Buyer is the lessee for the real property leases with (i)
Rahmah Properties, LLC and (ii) Union Square Hearing (collectively, the "Leases")
as set forth in Exhibit C to the APA and that VMF has provided all the costs and

2 This is a summary only. Reference should be made to the complete APA attached hereto as Exhibit 1. The terms
of the APA shall control over the terms of this summary in all instances.

1 expenses of the lessee under the Leases. Buyer shall remain the lessee on the Leases
2 and shall bear all costs and expenses of the Leases and further agrees to indemnify,
3 defend and hold harmless VMF, VHS and their affiliates from and against any and
all liabilities under of the Leases after the Closing Date.

- 4 f. Any of the Clinics' employees who have accepted an offer of employment with
5 Buyer shall be referred to as the "Hired Employees." All Hired Employees ceased to
6 be employees of VMF or its affiliates as of the Execution Date. VMF shall pay for
7 all paid time off ("PTO") accrued by the Hired Employees prior to the Execution
8 Date. Buyer shall provide all Hired Employees with substantially similar benefits as
the Hired Employees received while employed by Seller immediately prior to the
Execution Date.

9
10 **IV.**

11 **ARGUMENT**

12 **A. THE COURT SHOULD AUTHORIZE THE PRIVATE SALE TO PROCEED**

13 The Debtors seek approval of the sale of the Purchased Assets to Buyer in accordance with
14 §§ 363(b) and (f). A debtor in possession can sell assets outside of the ordinary course of business
15 through a private sale in a Chapter 11 case. More specifically, private sales are expressly authorized
16 under the Bankruptcy Rules. *See* Fed. R. Bankr. P. 6004(f)(1). Additionally, as described below,
17 most courts considering private sales in Chapter 11 pre-confirmation have assessed them under a
"business judgment" standard and asked whether the contemplated sale is in the best interest of the
bankruptcy estate.

18 **1. Section 363(b)**

19 Section 363(b)(1) provides that a debtor in possession may sell property of the estate "other
20 than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). "All sales
21 not in the ordinary course of business may be by private sale or by public auction." Fed. R. Bankr.
22 P. 6004(f)(1). *See Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc.*, 141 F.3d 490, 498 (3d Cir.
23 1998); *see also In re Trans World Airlines, Inc.*, No. 01-00056 (PJW), 2001 WL 1820326, at *4
24 (Bankr. D. Del. Apr. 2, 2001) ("[I]t is worth noting that a § 363(b) sale transaction does not require
25 an auction procedure. The auction procedure has developed over the years as an effective means
26 for producing an arm's length fair value transaction."). As set forth in *In re Nepsco, Inc.*, 36 B.R.
27 25, 26-27 (Bankr. D. Me. 1983):
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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

[C]urrent Bankruptcy Rule [6004(f)(1)] provides that *all* sales not in the ordinary course of business may be private or by public auction. If the sale is private, all creditors receive notice of the terms and conditions of the sale and the time fixed for filing objections. [] If no objections are filed, the trustee may proceed with the sale without either a hearing or a court order. [] Clearly, the thrust of this statutory scheme is to provide maximum flexibility to the trustee, subject to the oversight of those for whose benefit he acts, *i.e.*, the creditors of the estate. This scheme also promotes Congress' intent of keeping bankruptcy judges out of the administrative aspect of bankruptcy cases

As a general proposition, 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 Reg. Hosp. and Med. Ctr., Inc. (In re Gardens)*, 567 B.R. 802, 825 (Bankr. C.D. Cal. 2017); *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (*citing Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *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); *Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *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 (B.A.P. 9th Cir. 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. *In re Walter*, 83 B.R. at 19-20; *see also Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

In *In re MF Global, Inc.*, 535 B.R. 596 (Bankr. S.D.N.Y. 2015), the bankruptcy court approved a private sale of assets under the business judgment standard where only a single purchaser expressed interest in purchasing the assets and it was familiar with the rights which it would be

1 assigned. *Id.* at 606. The trustee also demonstrated, among other things, that the interested parties
2 received adequate and reasonable notice and both parties to the sale proceeded in good faith.
3 Consequently, the court found that the trustee and debtor had presented “uncontroverted evidence”
4 that the private sale “reflects the appropriate exercise of their sound business judgment” where the
5 agreement was negotiated extensively, no party objected to the proposed sale, and there was no
6 dispute about the adequacy of the consideration.

7 Here, the Debtors exercised their “sound business judgment” in making a decision to sell the
8 Purchased Assets to Buyer in a private sale. The Debtors engaged in extensive, arms-length
9 negotiations with Buyer over the terms of the APA. Adcock Declaration, ¶ 5. The proceeds from
10 the sale, while not large, will generate funds for the benefit of the estate. *Id.* Moreover, the
11 transactions that involve the voluntary termination of the Physician Employment Agreement
12 between non-debtor VMG and Doctor, and which are ancillary to the sale, are part of a larger
13 agreement that permit the Clinics to continue to operate uninterrupted. *Id.* A failure to consummate
14 a sale of the Purchased Assets to Buyer would result in virtually no return to the estates for the
15 Purchased Assets given their limited value, and would result in additional costs associated with the
16 removal of the Purchased Assets from the Clinics. *Id.* Accordingly, there is no question that the
17 proposed sale of the Purchased Assets to Buyer is in the best interests of the Debtors’ estates. *Id.*

18 **2. Section 363(f)**

19 Pursuant to § 363(f), a debtor’s assets may be sold free and clear of any and all liens, claims,
20 interests and other encumbrances if any one of the following conditions are satisfied: (1) applicable
21 nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity
22 consents; (3) such interest is a lien and the price at which such property is to be sold is greater than
23 the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such
24 entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such
25 interest. 11 U.S.C. § 363(f).

26 In this instance, the Purchased Assets may be sold free and clear of all interests pursuant to
27 §§ 363(f)(1), (f)(2) or (f)(5). For example, any secured creditors’ liens will attach to the proceeds
28 of sale in the same priority that the secured creditors held a security interest in the Purchased Assets

1 being sold. Furthermore, parties with a potential interest in the Purchased Assets will receive notice
2 of the proposed transaction and the lack of objection to the sale should be deemed consent to the
3 sale under § 363(f)(2).

4 Thus, in accordance with § 363(f), the transfer of the Purchased Assets to Buyer will be a
5 legal, valid, enforceable and effective transfer of the Purchased Assets, and will vest Buyer with all
6 right, title, and interest in the Purchased Assets free and clear of all liens, claims, encumbrances and
7 interests.

8 V.

9 **CONCLUSION**

10 For all the reasons set forth herein, the Debtors request the Court enter an order (i) approving
11 the APA and (ii) authorizing the private sale of the Purchased Assets to Buyer, under § 363, free
12 and clear of all liens, claims, encumbrances and interests.

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14 Dated: May 24, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
PATRICK C. MAXCY

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17
18 By /s/ Tania M. Moyron
Tania M. Moyron

19 Attorneys for the Chapter 11 Debtors and
20 Debtors In Possession
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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare, that if called as a witness, I would and could competently testify thereto, of my own personal knowledge, as follows:

1. I am the Chief Executive Officer of Verity Health System of California, Inc. (“VHS”). I became the Debtors’ Chief Executive Officer effective January 2018. Prior thereto, I served as VHS’s Chief Operating Officer since August 2017.

2. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge, my review of relevant documents, information provided to me by employees of the Debtors or the Debtors’ legal and financial advisors, or my opinion based upon my experience, knowledge, and information concerning the Debtors’ operations and the healthcare industry. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. This Declaration is in support of the *Debtors’ Notice And Motion To Approve Terms of a Private Sale of Clinics to Union Square Hearing, Inc. in Accordance with Sections 363(b) and (f) of the Bankruptcy Code* (“Motion”) and for all other purposes permitted by law.

4. Until January 31, 2019, Verity Medical Foundation (“VMF”) operated two clinics (the “Clinics”) located at (i) 2504 Samaritan Drive, Suite 20, San Jose, California and (ii) 450 Sutter Street, Suite 1404, San Francisco, California. The Clinics were operated pursuant to a Physician Employment Agreement between Dr. Matthew D. Mingrone, M.D. (the “Doctor”) and non-debtor Verity Medical Group, P.C. (“VMG”). By separate agreement, VMG and Doctor entered an agreement for termination of the Physician Employment Agreement and agreements related thereto effective January 31, 2019. Following Doctor’s separation from its affiliation with VMG and the Sellers, Buyer seeks to purchase certain assets used in the continued operation of the Clinics.

5. The Debtors engaged in extensive, arms-length negotiations with Union Square Hearing, Inc, a California general corporation (“Buyer”) over the terms of the Asset Purchase Agreement (the “APA”), between VMF, VHS, Buyer and Doctor. The APA provides for the purchase the Purchased Assets of the Clinics by Buyer, by way of private sale and subject to Bankruptcy Court approval. After closings of the sale, Buyer intends to continue to operate the Clinics. The proceeds from the sale, while not large, will generate funds for the benefit of the estate.

Moreover, the series of transactions that involve the voluntary termination of the Physician Employment Agreement between non-debtor VMG and Doctor, and which are ancillary to the sale, are part of a larger agreement that permit the Clinics to continue to operate uninterrupted. A failure to consummate a sale of the Purchased Assets to Buyer would result in virtually no return to the estates for the Purchased Assets given their limited value, and would result in additional costs associated with the removal of the Purchased Assets from the Clinics. Accordingly, I have concluded that the proposed sale of the Purchased Assets to Buyer is in the best interests of the Debtors' estates.

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

Executed this 24th of May, 2019 at Los Angeles, California.

TO BE SUBMITTED
RICHARD G. ADCOCK

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

EXHIBIT 1

EXHIBIT 1

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of January 31, 2019 (the "Execution Date") is by and between Union Square Hearing, Inc, a California general corporation ("Buyer"); Dr. Matthew D. Mingrone, M.D. (the "Doctor"); Verity Medical Foundation, a California nonprofit public benefit corporation ("Seller"); and Verity Health System of California, Inc., a California nonprofit public benefit corporation ("VHS").

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain assets located at clinics operated by Seller located at (i) 2504 Samaritan Drive, Suite 20, San Jose, California and (ii) 450 Sutter Street, Suite 1404, San Francisco, California (the "Clinics"), and to enter into certain other agreements in connection therewith;

WHEREAS, Seller filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") pending in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the "Bankruptcy Court") lead Case No. 2:18bk-20151-ER (the "Bankruptcy Case"); and

WHEREAS, Buyer and Seller intend to effectuate the transactions contemplated by this Agreement through a sale of the Purchased Assets (defined below) approved by the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code.

WHEREAS, (a) Buyer, Doctor and Verity Medical Group, P.C. ("VMG") have entered into an agreement for termination of that certain Physician Employment Agreement, dated December 4, 2017, between Doctor and VMG P.C. (the "PEA") without liability to the parties thereto, and (b) any other agreements between Buyer and Doctor, on the one hand, and any VHS affiliate, on the other hand, including all medical directorship agreements (collectively, with the PEA, the "Terminated Agreements") have been terminated by mutual agreement and without liability to the parties thereto, and the Terminated Agreements shall therefore have no further force and effect;

WHEREAS, Buyer, Doctor and Seller have entered into a transition agreement, which, among other things, permits Buyer's use and enjoyment of the Purchased Assets (defined below) pending Bankruptcy Court approval of the sale transaction contemplated herein;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

1. Purchased Assets. Subject to final approval of the transactions contemplated by this Agreement by the Bankruptcy Court and upon the terms and subject to the conditions contained in this Agreement, Seller will sell to Buyer and Buyer will purchase from Seller on the Closing Date (defined below), all of the following interest, rights and other assets of Seller (collectively, the "Purchased Assets");

- a) all of the tangible personal property owned by Seller and used in the operation of the Clinics, including equipment, furniture, machinery and office furnishings;
- b) all of the following to the extent legally transferrable and not subject to prior consent of any third party: operating manuals, forms, files, books, records, documents and computer software, including, without limitation, all patient records, medical records, employee records, financial records, equipment records, electronic medical records;
- c) all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables (i) located at the Clinics, or (ii) used in any way in the operation of or at the Clinics (the "Inventory"); and

d) to the extent used primarily with respect to the operation of the Clinics, all of Seller's web sites, URLs, and social media accounts, including but not limited to, Facebook and LinkedIn;

e) to the extent used primarily with respect to the Clinics and transferrable or assignable, Seller's right, title and interest in and to the telephone and facsimile numbers used with respect to the operation of the Clinics; and

f) the right to use any trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, trade secrets and the corporate or company names of the Clinics, together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any of the foregoing; and

2. Excluded Assets. Notwithstanding anything to the contrary in Section 1, Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Purchased Assets, including, without limitation, the following interests, rights and other assets of Seller (collectively, the "Excluded Assets"):

a) cash, cash equivalents and short-term investments, provided that any cash or cash equivalents generated by the services, goods, products and supplies provided by or performed by Buyer, its principals, staff and agents after the Execution Date shall not be deemed to fall within the definition of Excluded Assets; and

b) all accounts and interest thereupon, notes and interest thereupon and other receivables of such Seller, including, without limitation, accounts, notes or other amounts receivable, and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, and Seller Cost Report settlements related thereto, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Clinics, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided prior to the Execution Date, whether payable by Medicare, Medicaid, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, "Accounts Receivable") generated on or before the Closing Date.

3. Closing Date. Subject to the satisfaction or waiver of the conditions set forth herein, the consummation of the transactions contemplated by this Agreement, which have been approved by the Bankruptcy Court, shall take place within five (5) business days following the satisfaction or waiver of all other conditions to Closing set forth in Section 15, via remote exchange of signatures in counterparts by electronic transmission (or on such other date at such other time and place as the parties shall agree in writing) (the "Closing Date").

4. Purchase Price. In consideration of the sale, conveyance, transfer and delivery of the Purchased Assets, and subject to the terms and conditions herein, Buyer agrees to pay an aggregate purchase price on the Closing Date of Thirty Thousand Dollars (**\$30,000**) for the Purchased Assets plus the amount of any security deposits held by the lessors under the Leases (defined below) or any equipment leases assumed pursuant to this Agreement (the "Purchase Price"). Buyer shall provide the

Purchase Price in the form of a certified check no later than January 31, 2019, and Seller shall deposit the certified check upon Closing.

5. Liabilities. Buyer and Seller each acknowledge and agree that Buyer is purchasing only the Purchased Assets and assuming only (a) the liabilities set forth in Section 10, and (b) Seller's obligations under the Leases (defined below) (collectively, the "Assumed Liabilities") and Buyer is not assuming any other liabilities of Seller (all such other liabilities being retained by Seller).

6. Bill of Sale. On the Closing Date, Buyer and Seller shall enter into a bill of sale in substantially the form set forth on Exhibit A attached hereto.

7. Assignment and Assumption Agreement. On the Closing Date, Buyer and Seller shall enter into an assignment and assumption agreement in substantially the form set forth on Exhibit B attached hereto (the "Assignment Agreement"). Buyer hereby agrees to indemnify, defend and hold harmless Seller, VHS and their affiliates from and against any and all liabilities arising out of the agreements and liabilities assumed by Buyer pursuant to the Assignment Agreement.

8. Real Property. The parties acknowledge that Buyer is the lessee for the real property leases with (i) Rahmah Properties, LLC and (ii) Union Square Hearing (collectively, the "Leases") as set forth in Exhibit C and that Seller has provided all the costs and expenses of the lessee under the Leases. After Execution Date, Buyer shall remain the lessee on the Leases and shall bear all costs and expenses of the Leases and further agrees to indemnify, defend and hold harmless Seller, VHS and their affiliates from and against any and all liabilities under of the Leases after the Closing Date.

9. [Reserved].

10. Employment. Buyer agrees to make offers of employment, effective as of the Execution Date, to all employees of the Clinics. Any of the Clinics' employees who accept an offer of employment with Buyer as of or after the Execution Date shall be referred to as the "Hired Employees." All Hired Employees shall cease to be employees of Seller or its affiliates as of the Execution Date. Seller shall pay for all paid time off ("PTO") accrued by the Hired Employees prior to the Execution Date. Buyer shall provide all Hired Employees with substantially similar benefits as the Hired Employees received while employed by Seller immediately prior to the Execution Date.

11. Disclaimer of Warranties; Release and Waiver of Claims.

A. THE PURCHASED ASSETS TRANSFERRED TO BUYER WILL BE SOLD BY SELLER AND PURCHASED BY BUYER IN THEIR PHYSICAL CONDITION ON THE CLOSING DATE, "AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS" WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASES WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLER INCLUDED IN THE PURCHASED ASSETS, THE ASSUMED LIABILITIES ARE BEING ACQUIRED OR ASSUMED "AS IS, WHERE IS" ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS AND WITH ALL EXISTING LIENS, WHETHER KNOWN OR UNKNOWN. ALL OF THE TANGIBLE PURCHASED ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE CLOSING DATE.

B. Buyer acknowledges that Buyer will be examining, reviewing and inspecting all matters which in Buyer's judgment bear upon the Purchased Assets, Seller, VHS, the Clinics, the business of the Clinics and their value and suitability for Buyer's purposes and is relying solely on Buyer's own examination, review and inspection of the Purchased Assets and Assumed Liabilities.

C. Buyer and Doctor hereby, jointly and severally, release VHS, its affiliates and their respective predecessors, successors, corporate parents, subsidiaries, affiliates, present or former trustees, directors, officers, attorneys, agents and employees from any and all claims, suits, damages, liabilities, costs, losses, interest, or expenses of any kind or nature whatsoever, which have arisen or could arise (i) under this Agreement, the Purchased Assets, or their suitability for any purpose whatsoever and (ii) from all responsibility and liability regarding the Terminated Agreements.

D. Buyer acknowledges that the representations and warranties of Seller contain in Section 12 are the sole and exclusive representations and warranties made by Seller to Buyer.

E. With respect to the claims identified and released pursuant to Sections 11(C) and (D) of this Agreement, Buyer and Doctor hereby waive and release any and all rights under Section 1542 of the California Civil Code as said statute pertains to the claims being released hereunder. California Civil Code Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER INTERIM SETTLEMENT WITH THE DEBTOR."

Buyer and Doctor expressly agree that this Agreement shall extend and apply to all unknown, unsuspected and unanticipated damages within the scope of the releases set forth in Sections 11(C) and (D) herein, as well as those that are now disclosed.

12. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

A. Seller has full power and authority to enter into this Agreement and carry out the transactions contemplated herein.

B. This Agreement has been duly and validly executed and delivered by Seller and, assuming due and valid execution by Buyer, this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

C. Seller is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of California. Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted. Neither the execution and delivery by Seller of this Agreement nor the consummation of the transactions contemplated hereby by Seller nor compliance with any of the material provisions hereof by Seller, will violate, conflict with or result in a breach of any material provision of Seller's articles of incorporation or bylaws or any other organizational documents of Seller.

13. Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

A. Buyer has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Buyer to perform its obligations and agreements hereunder.

B. This Agreement has been duly and validly executed and delivered by Buyer and, assuming due and valid execution by Seller, this Agreement constitutes a valid and binding obligation of Buyer enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies. Buyer represents that the signatory below has been granted full authority to enter into this Agreement by Doctor.

C. Buyer is a professional corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

D. Neither the execution and delivery by Buyer of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Buyer will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Buyer or any contract, lease or other instrument by which Buyer is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Buyer is or may be subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Buyer is subject.

E. Buyer acknowledges that it is purchasing the Purchased Assets on an "AS IS, WHERE IS" basis, and that Buyer is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of Seller other than as expressly set forth in this Agreement. Buyer further acknowledges that Seller is not making any representations or warranties herein relating to the Purchased Assets or the operation of the Clinics on and after the Closing Date.

14. Covenants of Buyer and Seller.

A. Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement.

B. Seller will use its reasonable best efforts to cause or obtain the satisfaction of the conditions applicable to Seller specified in Sections 15(A) and (C) below. Buyer will use its reasonable best efforts to cause or obtain the satisfaction of the conditions applicable to Buyer specified in Sections 15(A) and (B) below.

C. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby including, without limitation, the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the party incurring such costs and expenses.

D. Seller shall exercise reasonable efforts to obtain a "Sale Order" approving this Agreement, subject to its obligations in respect of any better and higher offer for Seller's assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term "Sale Order"

shall mean an order of the Bankruptcy Court authorizing the sale of the Purchased Assets to Buyer consistent with this Agreement and in a form reasonably satisfactory to Buyer.

E. Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against Seller as debtor solely in the Bankruptcy Court.

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

15. Conditions to the Obligations of the Parties.

A. Conditions to Each Party's Obligations. The respective obligations of each party to effect the transactions contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following conditions:

(i) No court or other governmental entity having jurisdiction over Seller or Buyer, or any of their respective subsidiaries, shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which is then in effect and has the effect of making the transactions contemplated by this Agreement illegal.

(ii) The Bankruptcy Court shall have entered the Sale Order, which Sale Order shall not have been reversed or subject to any stay. The Sale Order shall be in form and substance acceptable to Buyer in its reasonable discretion.

B. Conditions to Obligation of Seller. The obligation of Seller to effect the transactions contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the condition that Buyer shall have performed in all material respects each of its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date, including payment of the Purchase Price, and each of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

C. Conditions to Obligations of Buyer. The obligations of Buyer to effect the transactions contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the condition that Seller shall have performed in all material respects each of its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date, and each of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

16. Termination. This Agreement may be terminated in writing at any time prior to the Closing Date:

A. By Buyer, (i) if the Closing Date does not occur within fifteen (15) days after the date of entry of a final and nonappealable Sale Order and such failure is not due to a breach by Buyer or (ii) no Sale Order has been entered by _____, 2019; other than due to Buyer's breach of this Agreement;

B. By Seller, (i) if the Closing Date does not occur within fifteen (15) days after the date of entry of a final and nonappealable Sale Order and such failure is not due to a breach by Seller or (ii) no Sale Order has been entered by _____, 2019; other than due to Seller's breach of this Agreement; or

C. By Buyer or Seller if, before the Closing Date, the other party is in material breach of any representations, warranty, covenant or agreement contained herein and has not cured the same.

17. Governing Law. This Agreement and the agreements executed in connection herewith shall be governed by the laws of the State of California (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of the State of California) as to all matters including, but not limited to, matters of validity, construction, effect, performance and remedies.

18. Dispute Resolution. So long as the Bankruptcy Case remains open, the parties may enforce this Agreement in the Bankruptcy Court and consent to the Bankruptcy Court's jurisdiction with respect to all such matters.

19. Further Assurances. From time to time after the closing, at Buyer's request, and without further consideration from Buyer, Seller shall execute and deliver such other instruments of conveyance and transfer and take such other actions as Buyer reasonably may require to convey, transfer to and vest in Buyer and to put Buyer in possession of the Purchased Assets.

20. Waiver of Compliance; Consents. Any failure of Seller on the one hand, or Buyer on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived in writing by Buyer or by Seller, respectively, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 20.

21. Expenses. Each party will pay its own legal, accounting and other expenses incurred by such party or on its behalf in connection with this Agreement and the transactions contemplated herein.

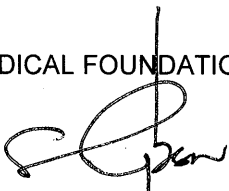
22. Miscellaneous. This Agreement and all of the provisions hereof and the other documents or agreements contemplated hereby shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder or under any of the other documents or agreements contemplated hereby shall be assigned by either party without the written consent of the other party. This Agreement constitutes the product of the negotiation of the parties hereto and the enforcement hereof shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship hereof. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute but one and the same instrument. The article and section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement, which term as used throughout includes the Exhibits hereto, embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Closing Date.

SELLER:

VERITY MEDICAL FOUNDATION

By: 
Name: STEPHEN CAMPBELL MD
Title: CHIEF OF PHYSICIAN OPERATIONS

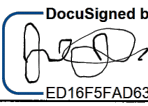
VHS:

VERITY HEALTH SYSTEM OF CALIFORNIA, INC.


By: _____
Name: _____
Title: _____

BUYER:

Union Square Hearing, Inc.

DocuSigned by:

By: _____
Name: Jacob Johnson, MD
Title: President

DOCTOR:

DocuSigned by:

Name: Dr. Matthew D. Mingrone, M.D.