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Verity Health System of California, Inc., et al.

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

In re: Verity Health System Of California, Inc., et al.,[1] Debtors and Debtors In Possession.	District Court Case No.: 2:19-cv-00133-DMG Bankruptcy Court Lead Case No.: 2:18-bk-20151-ER Hon. Dolly M. Gee
Xavier Becerra Attorney General of California, Appellant. v. Verity Health System of California, Inc., et al. Appellee.	**APPELLEE VERITY HEALTH SYSTEM OF CALIFORNIA, INC., ET AL.'S, OPPOSITION TO THE CALIFORNIA ATTORNEY GENERAL'S MOTION FOR STAY PENDING APPEAL [RELATES TO DOCKET NO. 6]** **Hearing:** **Date: February 22, 2019** **Time: 9:30 am** **Location: Courtroom 8C, 350 W. 1st St., Los Angeles, CA 90012**

[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.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Verity Health System of California, Inc. ("Verity Health System"), and 16 of its affiliated entities (collectively, the "Debtors"), filed chapter 11 bankruptcy cases in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Cases"). Verity Health System's chapter 11 filing is the second largest hospital bankruptcy filing in American history and involves six operating hospitals. Two of these hospitals—O'Connor Hospital and Saint Louise Regional Hospital (collectively, the "Hospitals")—are located in Santa Clara County and provide critical services to low-income, high-need communities in the region. The Bankruptcy Court entered an order authorizing the Debtors to sell the Hospitals to the County of Santa Clara (the "County").

Through his motion for a stay pending appeal, the California Attorney General asks this Court to reject reasoned decisions by the Bankruptcy Court and block the sale of these two Hospitals to the only entity willing to buy them—the County. If such a stay is granted, the stay would terminate the County's purchase of the Hospitals, result in their closure, and would eviscerate healthcare access for some of the Santa Clara County's neediest residents.

The Attorney General does not seek a stay based on any evidence that the County will fail to provide appropriate care to its residents if the County purchases the Hospitals. He acknowledges that the County is a subdivision of the State of California whose mission is to provide safety-net services to the public, a mission it has faithfully fulfilled through its existing heath system for more than a century. Instead, the Attorney General's sole basis for seeking a stay is a desire to protect his purported, albeit misread, statutory authority to unilaterally impose certain conditions on the sale of the Hospitals to any buyer, including a public entity such as the County. In seeking the instant stay, the Attorney General recycles the stay

motion properly rejected by the Bankruptcy Court, and blithely ignores the Bankruptcy Court's well-reasoned determinations that (i) the California Corporations Code grants the Attorney General no authority whatsoever in sales of non-profit hospitals and other charitable assets to public as opposed to private entities, (ii) the Attorney General offered no other authority to support his position, and (iii) in any event, he failed to appropriately raise these arguments below.

Indeed, as the Bankruptcy Court correctly held, the Attorney General has no authority to review or impose conditions on the sale to the County because a public entity like the County, by the plain language and purpose of the statute he purports to enforce, does not fall within the purview of California Corporations Code ("Cal. Corp. Code") § 5914(a)(1). Moreover, the specific conditions the Attorney General seeks to impose here—conditions his office imposed on Verity Health Systems when it purchased the Hospitals in 2015 (the "2015 Conditions")—are an "interest in property" within the meaning of § 363(f) of the Bankruptcy Code, and, thus, Verity Health System may sell the Hospitals "free and clear" of the 2015 Conditions as part of the pending bankruptcy proceedings.

Remarkably, the Attorney General does not even attempt to substantively address the foregoing issues that were carefully analyzed by the Bankruptcy Court. Instead, the Attorney General, in broad strokes, simply discusses his likelihood to succeed on the merits by generally referencing his alleged police and regulatory powers used to impose the 2015 Conditions several years ago against a private entity, stating he needs power to protect the public health, safety, and welfare of the People of California. Notably, when referencing his alleged authority, however, the Attorney General speaks only in the abstract regarding that duty rather than addressing how he is fulfilling it with respect to his attempts to block the sale of these Hospitals to the County. The Attorney General's assertions regarding his need to supervise sales of charity hospitals to public entities ignores the fact that the State Legislature clearly and expressly delegated to counties the relevant authority

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to protect the health, safety, and welfare of their residents, and, as such, the Attorney General's "supervision" over this Sale to the County is both improper and unnecessary.

Perhaps most troublingly, in attempting to expand the scope of his power to encompass sales of charity hospitals to public entities, the Attorney General ignores the dire impact that the closure of these Hospitals would have on the California residents he seeks to protect and serve. In concluding that the Attorney General did not carry his burden on *any* of the required factors for the extraordinary measure of staying the Sale Order, the Bankruptcy Court held: *"[t]he most probable outcome of a stay would be the collapse of the sale. If the sale collapsed, there is a strong possibility that the Debtors [Verity Health System] would lack sufficient funds to maintain operations pending a sale to another buyer, and would be required to close the Hospitals. Closure of the Hospitals, even if it were temporary, would severely harm the public interest*." Debtors' Appx. (as defined below) No. 11, at 332 [Bankr. Docket No. 1418].

Finally, if the Court considers granting a stay despite the risks to the Debtors and the County and the slim likelihood of success on the merits, the Court should require the Attorney General to post a bond in the amount of $350 million, to protect the Debtors and their estates from the damages which may well be incurred merely because the Attorney General continues to litigate against the best interests of the Debtors, the communities the Hospitals serve, the employees working in the Hospitals, and, most importantly, the patients who receive care and treatment at the Hospitals.

Based on the foregoing, and for the reasons set forth in greater detail below, the Bankruptcy Court did not abuse its discretion in holding that the Attorney General cannot satisfy the standards for a stay pending appeal, and the Debtors respectfully request that the Court deny the Motion.

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II.

STATEMENT OF FACTS

A. General Background.

1. On August 31, 2018 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[2] *See Appellee Verity Health System Of California, Inc., Et. Al.'s Appendix In Support of Opposition to the Appellant California Attorney General's Motion For Stay Pending Appeal* (the "Debtors' Appendix") No. 1-3, at 1-72; [Bankr. Docket No. 1].[3] Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operate six acute care hospitals, including the Hospitals and other facilities in the state of California. Debtors' Appx. No. 4, at 77 [Bankr. Docket No. 8, at ¶ 11; *Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* (Mr. Adcock is the Debtors' CEO)].

3. Saint Louise Regional Hospital is a 93-bed facility and 24-hour emergency department, which provides services to the residents of southern Santa Clara County, including Morgan Hill, San Martin, and Gilroy. The Hospital has an emergency department with eight licensed emergency treatment stations. The Hospital also has five surgical operating rooms for inpatient and outpatient surgical

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[2] Except as otherwise noted, all references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, et seq., as amended. All references to Rules are to the Federal Rules of Civil Procedure.

[3] The Debtors have included the bankruptcy petitions of their corporate parent, Verity Health System, Saint Louise Hospital, and O'Connor Hospital.

procedures. The Hospital provides comprehensive healthcare services including cancer, emergency, rehabilitation, and surgical care. The Hospital is accredited by The Joint Commission. Debtors' Appx. No. 4, at 84, 85 [Bankr. Docket No. 8, at ¶ 42].

4. Saint Louise Regional Hospital owns and operates the De Paul Urgent Care Center. The De Paul Urgent Care Center is located on the DePaul Campus, an approximately 25- acre campus located in Morgan Hill, and offers patients non-emergency medical services seven days a week. The De Paul Urgent Care Center treats non-life threatening cases, such as minor injuries and lacerations, strep throat, sinus infections, rashes, nausea, vomiting, colds, flu, and fever. Debtors' Appx. No. 4, at 85 [Bankr. Docket No. 8, at ¶ 43].

5. O'Connor Hospital is a nonprofit public benefit corporation that operates a 358- licensed-bed, general acute care hospital that serves residents from the greater San José area. The hospital has an emergency department with 23 emergency treatment stations. It also has 11 surgical operating rooms and two cardiac catheterization labs. The hospital offers a comprehensive range of healthcare services, including emergency, cardiac, orthopedic, cancer, obstetrics, and sub-acute care services. The hospital is accredited by The Joint Commission. Debtors' Appx. No. 4, at 81 [Bankr. Docket No. 8, at ¶ 32].

6. 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. Debtors' Appx. No. 4, at 77; [Bankr. Docket No. 8, at 4, ¶ 12]. On the Petition Date, the Debtors had approximately 850 inpatients. Debtors' Appx. No. 4, at 79; [Bankr. Docket No. 8, at ¶17]. The scope of the services provided by the Verity Health System is exemplified by the fact that in 2017, the Hospitals provided

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medical services to over 50,000 inpatients and approximately 480,000 outpatients. Debtors' Appx. No. 4, at 77 [Bankr. Docket No. 8, at ¶ 12].

7. After the Petition Date, on November 6, 2018, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors. Debtors Appx. No. 14, at 393-401 [Bankr. Docket No. 197].

B. The County's Meeting With the Attorney General.

8. Shortly after the Petition Date, the County Executive, Dr. Jeffrey Smith, attended a meeting with the Attorney General himself and affirmed the County's commitment to public health and maintaining the Hospitals to benefit all residents, including low-income members, of its community. Supplemental Declaration of Jeffrey Smith, M.D, J.D. at ¶¶ 9-10 (the "Supplemental Smith Decl."). Dr. Smith reiterated to the Attorney General that this was consistent with state and local laws that applied to the County and that providing "clinical services [and] enhanced access to healthcare services throughout the County to all residents, regardless of their ability to pay, has been, and remains, the primary motivating factors underlying the County's interest in purchasing the [Hospitals]." *Id.* at ¶ 10.

C. The Bid Procedures Order.

9. On October 1, 2018, the Debtors filed their *Notice Of 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 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"). *See Appendix in Support of California Attorney General's Emergency Motion to Stay the Bankruptcy Court's Order Authorizing the*

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Sale of Certain of the Debtor's Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and Memorandum of Decision Overruling Objections of the California Attorney General (the "AG Appx."), No. 2, at 437-568 [Bankr. Docket No. 365].

10. The Bankruptcy Court held a hearing on the Sale and Bidding Procedures Motion and thereafter entered an order on October 31, 2018, approving the Sale and Bidding Procedures Motion (the "Bidding Procedures Order"). Debtors' Appx. No. 6, at 221-254 [Bankr. Docket No. 724]. The County served as the Stalking Horse Bidder under the terms of the Bidding Procedures Order. The Bidding Procedures Order also approved the Asset Purchase Agreement (the "APA"), AG Appx. No. 2, at 489-568 [Bankr. Docket 365-1], dated October 1, 2018, between VHS, Verity Holdings, LLC, a California limited liability company, O'Connor Hospital, a California nonprofit public benefit corporation, and Saint Louise Regional Hospital, a California nonprofit public benefit corporation, on the one hand; and the County, on the other hand, to be used by the County as the stalking horse purchaser of the assets.

11. The Bidding Procedures Order established a deadline of November 30, 2018, at 4:00 p.m. (PST), for bidders to submit partial bids for the Assets and a deadline of December 5, 2018, at 4:00 p.m. (PST), to submit full bids for the Assets (each a "Bid Deadline"). An auction of the Assets was also scheduled to take place on December 11 and December 12, 2018. Ultimately, after extensive marketing efforts by the Debtors' investment banker, Cain Brothers, a division of KeyBanc Capital Markets ("Cain"), no party emerged willing to place a bid for the Assets, whether partial or aggregate, under the Bidding Procedures Order. *See* Debtors' Appx. No. 9, at 290-293 [Bankr. Docket No. 1041], *Declaration of James Moloney* (one of the Debtors' investment banker). Also, no party requested an extension of time to bid past the Bid Deadline. *Id*. Accordingly, under the terms of the APA and the Bidding Procedures Order, no auction was held and the Debtors declared the

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County as the prevailing purchaser of the Assets. *See* Debtors' Appx. No. 8, at 259-260 [Bankr. Docket No. 1005].

D. The Sale Order.

12. On December 12, 2018, the Debtors filed their *Memorandum In Support Of Entry Of Order (1) Approving Sale Of Certain Assets To Santa Clara County Free And Clear Of All Encumbrances; (2) Approving Debtors' Assumption And Assignment Of Certain Unexpired Leases And Executory Contracts And Determining Cure Amounts And Approving Debtors' Rejection Of Those Unexpired Leases And Executory Contracts Which Are Not Assumed And Assigned; (3) Waiving The 14-Day Stay Periods Set Forth In Bankruptcy Rules 6004(H) And 6006(D); And (4) Granting Related Relief* (the "Memorandum"), AG Appx. No. 7, at 860-892; [Bankr. Docket No. 1041], and explicitly requested that the sale order be "effective immediately upon entry." AG Appx. No. 7, at 881-82. On December 14, 2018, the Attorney General filed a response to the Memorandum, stating that "**the California Attorney General does not object to the sale to the County of Santa Clara** [. . .]" (the "No Objection Response") (emphasis added). AG Appx. No. 8, at 895 [Bankr. Docket No. 1066]. Again, the Attorney General's Motion does not mention or address this statement in its factual recitation.

13. On December 19, 2018, the Bankruptcy Court held the Sale Hearing, where counsel for the Attorney General indicated that, despite the No Objection Response, he did indeed oppose the Sale, although as part of the presentation the Deputy Attorney General also stated that the Attorney General did "not want to stop the sale of the hospitals." *See* Debtors' Appx. No. 13, at 374-75, Sale Hearing Transcript. The Debtors objected to the Attorney General's opposition to the Sale given the Attorney General's waiver and estopping behavior. On December 21, 2018, the Bankruptcy Court issued its *Order Providing Notice of The Bankruptcy Court's Intent to Authorize the Debtors to Sell Hospitals Free and Clear of the 2015 Conditions Asserted by the California Attorney General*, AG Appx. No. 9, at

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908-917; [Bankr. Doc. No. 1125] (the "Briefing Order") in which the Bankruptcy Court indicated that it intended to rule against the Attorney General, and required responses on December 24, 2018. The Attorney General filed a response [AG Appx. No. 11, at 922-942 [Bankr. Docket No. 1140 at 11]], and the Debtors also filed a response AG Appx. No. 10, at 918-921 [Bankr. Docket No. 1139] in which (i) they concurred with the Bankruptcy Court's indications in the Briefing Order, (ii) emphasized that the Debtors and the County relied on the Attorney General's written statement indicating he had no objection, and (iii) that the Debtors satisfied multiple § 363(f) tests.

14. On December 26, 2018, the Bankruptcy Court issued its *Memorandum of Decision Overruling Objections of the California Attorney General to the Debtors' Sale Motion*, AG Appx. No. 14, at 971-983 [Bankr. Docket No. 1146] (the "Sale Decision"), wherein the Bankruptcy Court overruled the Attorney General's objections and found that the Attorney General waived these objections and was equitably estopped from asserting them. The Bankruptcy Court also held that the Sale Order should be effective immediately to allow the sale to progress to closing and because the Attorney General would suffer no prejudice from the sale closing immediately while the estate would benefit from the close. AG Appx. No. 14, at 982-983 [Bankr. Docket No. 1146, at 11-12].

15. The Bankruptcy Court further found that the Attorney General's response stating that he had no objection acted as a waiver and also estopped him from later saying he did have an objection, in part, because had the Debtors and the County been aware of the Attorney General's "true position," they "would have more vigorously contested the Attorney General's arguments regarding the binding effect of the Conditions." AG Appx. No. 14, at 978 [Bankr. Docket No. 1146, at 7].

16. On December 27, 2018, the Bankruptcy Court issued its *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Santa Clara County Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B)*

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Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting Related Relief. AG Appx., at 984-1008 [Bankr. Docket No. 1153] (the "Sale Order").

17. The Sale Order provided, in relevant part: "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 Bankruptcy 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." *See* AG Appx. No. 15, at 991, 1003-1004 [Bankr. Docket No. 1153, at 7, 9-20].

E. The Attorney General's Motion for Stay In The Bankruptcy Court and Refusal to Meet and Confer In Good Faith.

18. Thirteen days after the entry of the Sale Order, on January 9, 2019, the Attorney General filed his motion for stay pending appeal seeking to stay the Sale Order (the "Bankruptcy Stay Motion"). AG Appx. No. 17, at 1055-87 [Bankr. Docket No. 1219]. The Bankruptcy Stay Motion is nearly substantively identical to the Attorney General's current stay Motion before this Court.

19. The County then undertook substantial, good faith efforts to re-confirm its commitment to local public health and the communities served by the Hospitals. On January 14, 2019, in an effort to resolve the Attorney General's Bankruptcy Stay Motion, the County sent a letter to the Attorney General explaining that (i) the "counties in California are charged with provisions of all core safety net services to their neediest residents," (ii) the "County operates one of the largest public safety net hospitals in California—Santa Clara Valley Medical Center," (iii) the 2015 Conditions did not apply to the County (as a subdivision of the State), and (iv) the imposition of the 2015 Conditions "imperil[ed]" the acquisition of the Hospitals because they were "irreconcilable" with the County's

legal duties (the "County to AG Letter"). *See* Declaration of James Williams, at ¶ 4, Exh. 1. The County to AG Letter also indicated that the County was offering the Attorney General a proposed memorandum of understanding regarding the Hospitals and the County's commitment to public health. *Id.* at Exh. 1.

20. On January 15, 2019, the County's senior leadership travelled in inclement weather to Sacramento to meet in person with the Attorney General's senior leadership to discuss the Hospitals and the matters discussed in the County to AG Letter. Supplemental Smith Decl., at ¶¶ 12-13. The Attorney General, however "summarily refused to enter into such a legally enforceable arrangement," and the meeting ended after five minutes, forcing the County executives to travel back to Santa Clara without any progress or resolution. *Id.*

21. The Debtors, the Official Committee of Unsecured Creditors, and the County opposed the Bankruptcy Stay Motion. AG Appx. No. 18, at 1088-1153 [Bankr. Docket No. 1301]; Debtors' Appx. No. 10, at 294-322; [Bankr. Docket No. 1318]; AG Appx. No. 21, at 1177-1179 [Bankr. Docket No. 1334]. The Attorney General then filed a reply in support of his Bankruptcy Stay Motion. AG Appx. No. 22, at 1180-1203; [Bankr. Docket No. 1365].

22. Prior to the hearing on the Bankruptcy Stay Motion, the Court issued a tentative ruling (the "Tentative Ruling") holding that the Attorney General failed to carry his burden on any of the required factors for the extraordinary measure of staying the Sale Order and stated: "**The most probable outcome of a stay would be the collapse of the sale. If the sale collapsed, there is a strong possibility that the Debtors would lack sufficient funds to maintain operations pending a sale to another buyer, and would be required to close the Hospitals. Closure of the Hospitals, even if it were temporary, would severely harm the public interest**." Debtors' Appx. No. 11, at 332; [Bankr. Docket No. 1418] (Tentative Ruling) (emphasis added). The Bankruptcy Court's ruling also took into account the evidence regarding the tremendous efforts by hundreds of parties, including the

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Debtors and the County, and significant dollars and resources expended on closing the Sale. *Id.*

23. On January 30, 2019, the Bankruptcy Court held a hearing on the Attorney General's Bankruptcy Stay Motion, and, after oral argument, adopted its Tentative Ruling as its final ruling. Debtors' Appx. No. 11, at 324-333 [Bankr. Docket No. 1418]. On January 30, 2019, the Debtors lodged an order in the Bankruptcy Court, pursuant to the Bankruptcy Court's instructions. AG Appx. No. 23, at 1204-1208 [Bankr. Docket No. 1422].

24. Thereafter, but before the Bankruptcy Court had issued its order, the Attorney General, without warning, service or conferral with the Debtors, filed his Motion in this Court on February 1, 2019.

25. On February 5, 2019, the Bankruptcy Court entered an order denying the Bankruptcy Stay Motion with prejudice. Debtors' Appx. No. 12, at 334-37; [Bankr. Docket No. 1464].

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III.

STANDARD OF REVIEW

A. THE ATTORNEY GENERAL'S MOTION IS REVIEWED UNDER AN ABUSE OF DISCRETION STANDARD.

Though the Attorney General styles the relief he seeks as a Motion, it is, in effect, an accelerated, interlocutory appellate petition because he seeks reversal of identical findings made by the Bankruptcy Court. Thus, the Motion must be reviewed under an abuse of discretion standard. Bankruptcy Rule 8005 requires the Bankruptcy Court to make an initial determination of whether a stay should be granted. Fed. Bankr. R. 8005 ("A motion for a stay of the judgment, order, or decree of a bankruptcy judge . . . pending appeal must ordinarily ***be presented to the bankruptcy judge in the first instance***. A motion for such relief, or modification or termination of relief granted by a bankruptcy judge, may be made

to the district court or the bankruptcy appellate panel, but ***the motion shall show why the relief, modification or termination was not obtained from the bankruptcy judge***.") (emphasis added).

Therefore, when a bankruptcy court has denied a motion for stay pending appeal, review of the bankruptcy judge's decision is limited to whether the bankruptcy abused its discretion. *In re Irwin*, 338 B.R. 839, 846-48 (E.D. Cal. 2006) (requiring party seeking stay pending appeal to provide a record of how the bankruptcy court disposed of the stay motion below and treating the motion as an appeal of the lower court's denial of the stay); *Universal Life Church v. U.S.*, 191 B.R. 433, 444 (E.D. Cal. 1995) ("When a bankruptcy court has ruled on the issue of a stay of its order pending appeal, the district court, sitting as an appellate court, reviews that decision for abuse of discretion."); *In re Wymer*, 5 B.R. 802, 807 (B.A.P. 9th Cir. 1980) (when the bankruptcy court denies the request for a stay pending appeal, "the appellate court simply determines whether the trial court abused its discretion.").

When reviewing the decision of a bankruptcy judge to deny a stay pending appeal the standard is a high one. Under the abuse of discretion standard, a reviewing court cannot reverse absent concluding that, if the trial court identifies the correct legal standard, an abuse of discretion occurs only if the decision of the trial court is illogical, implausible, or without support in the record. *See United States v. Hinkson*, 585 F.3d 1247, 1251 (9th Cir. 2009) (en banc) (Ninth Circuit adopts a two-part test for determining an abuse of discretion and holding that, if the trial court identifies the correct legal rule, abuse of discretion occurs only if the trial court reached a result that is illogical, implausible or without support in inferences that may be drawn from the record); *see also In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010). The abuse of discretion standard requires an appellate court to uphold a trial court decision that falls within a broad range of permissible conclusions. *See Kode v. Carlson*, 596 F.3d 608, 612-13 (9th Cir. 2010).

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B. THE ATTORNEY GENERAL CANNOT SATISFY THE STANDARDS REQUIRED FOR A STAY PENDING APPEAL.

Courts may issue a stay of a judgment, order, or decree pending appeal, pursuant to Bankruptcy Rule 8007(a)(1). Fed. R. Bankr. P. 8007(a)(1); *In re Gardens Hosp. and Med. Ctr., Inc.* ("*In re Gardens*"), 567 B.R. 820, 830 (Bankr. C.D. 2017). "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder,* 556 U.S. 418, 433 (2009). It is instead "an exercise of judicial discretion," and "[t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id*. The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *Id.*

In determining whether to grant a stay pending appeal, courts consider the following four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken*, 556 U.S. at 426.

The Attorney General, as the party requesting entry of a stay pending appeal, bears the burden of proof in establishing all four of the above-cited factors by a preponderance of the evidence. *In re F.G. Metals, Inc.*, 390 B.R. 467, 472 (Bankr. M.D. Fla. 2008). The Attorney General is required to prove each of these four elements in order to be entitled to a stay pending appeal; "failure to satisfy one prong of the standard for granting a stay pending appeal dooms the motion." *In re Irwin*, 338 B.R. at 843 (quoting *In re Deep*, 288 B.R. 27, 30 (N.D.N.Y. 2003)); *accord In re Sung Hi Lim*, 7 B.R. 319, 321 (Bankr. D. Hi. 1980) ("[I]f even one condition is not satisfied, the Court will not issue a stay [.]").

To be entitled to a stay pending appeal, the moving party must make a "minimum permissible showing" with respect to each of the four factors. *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011); *In re Gardens*, 567 B.R. at 830.

Provided the moving party meets a minimum threshold as to each factor, the Court may "balance the various stay factors once they are established." *Leiva-Perez*, 640 F.3d at 965. Under this balancing approach, a stronger showing of irreparable harm can offset a weaker showing of likelihood of success on the merits, and vice versa—provided that the minimum threshold with respect to each factor has been established. *Id.* at 965–66; *see also id.* at 964 ("Petitioner must show either a probability of success on the merits and the possibility of irreparable injury, or that serious legal questions are raised and the balance of hardships tips sharply in petitioner's favor. These standards represent the outer extremes of a continuum, with the relative hardships to the parties providing the critical element in determining at what point on the continuum a stay pending review is justified.").

In determining whether each of these four factors has been established, the Court should be mindful that a discretionary stay is an "extraordinary remedy." *In re Rivera*, 2015 WL 6847973, at *2 (N.D. Cal. Nov. 9, 2015). Therefore, the power of a court to enter a stay pending appeal "'should be sparingly employed and reserved for the exceptional situation.'" *Wymer*, 5 B.R. at 806 (*quoting People v. Emeryville*, 446 P.2d 790, 793 (Cal. 1961)). This is because "[a] stay is an 'intrusion into the ordinary processes of administration and judicial review . . . . The parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execution of [final] orders . . . ." *Nken*, 556 U.S. at 427 (citations omitted)).

The cumulative effect of these two standards on the Motion is that this Court reviews the Bankruptcy Court's decision for whether there was an abuse of discretion in denying the "extraordinary remedy" of a discretionary stay.

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IV.

ARGUMENT

A. THE ATTORNEY GENERAL'S MOTION IS FACIALLY DEFECTIVE AND DOES NOT DEMONSTRATE THAT THE BANKRUPTCY COURT ABUSED ITS DISCRETION WHEN IT DENIED THE ATTORNEY GENERAL'S MOTION FOR STAY PENDING APPEAL.

Viewed under the applicable standard, the Motion is facially and woefully inadequate for its failure to apprise this Court of the record and instead burying the record in a 1000+ page Appendix. *See Johnson v. Colvin*, 2015 WL 3823002, at *15 (E.D. Wash. June 19, 2015) ("The Court will not sift through the voluminous record searching for and re-weighing the evidence [to] support [a litigant and a] memorandum cannot cure this defect.").

Moreover, the Motion (i) failed to inform this Court that the Attorney General filed a response stating that he had no objection to the Sale [AG Appx. No. 8, at 895]; [Bankr. Docket No. 1066]], (ii) did not explain that the Bankruptcy Court held a Sale Hearing and considered his objection (or attach the transcript) [Debtors' App. No. 13, 338-391], (iii) did not include the Bankruptcy Court's Tentative Ruling (which became the Court's final ruling denying his request for a stay) [Debtors' Appx. No. 11, at 323-333], and, (iv) failed to inform this Court that the Bankruptcy Court excluded, under Federal Rule of Evidence 403, the alleged unrecorded, parol discussions with the County that the Attorney General trumpets in his Motion. AG Appx. No. 14, at 976-977; [Bankr. Docket No. 1146]. *See Irwin*, 338 B.R. at 446 ("Inherent in the motion [challenging a bankruptcy court's denial of a stay] is a requirement that the moving party provide a record of the bankruptcy court's actions . . .").

Regardless, here, the Bankruptcy Court clearly identified the correct rule of law to apply to whether to grant a stay pending appeal. Further, the Bankruptcy Court held hearings, allowed the parties to brief the issues, reviewed all of the facts and arguments presented by the parties, and provided substantive, logical reasons

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for the decision it made in denying the Bankruptcy Stay Motion. Debtors' Appx. No. 11, at 323-333 [Bankr. Docket No. 1418]. The Bankruptcy Court's decision was not illogical, implausible or without support in inferences that may be drawn from the record. Therefore, this Court should deny the AG Stay Motion because the Attorney General failed to establish an abuse of discretion.

B. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT THE ATTORNEY GENERAL CANNOT SATISFY THE FACTORS REQUIRED FOR A STAY PENDING APPEAL.

For the reasons discussed below, the Bankruptcy Court correctly denied the Attorney General's Bankruptcy Stay Motion. Even if this Court were to review the Motion *de novo*, the Court should deny the Motion.

1. The Attorney General Cannot Demonstrate Likelihood of Success on the Merits

The Attorney General must make a strong showing he is likely to succeed on the merits of his appeal. As explained by the United States Supreme Court, "[i]t is not enough that the chance of success on the merits be better than negligible," and "[m]ore than a mere 'possibility' of relief is required." *Nken*, 556 U.S. at 434 (citations omitted).

Here, the Attorney General must overcome multiple, freestanding holdings by the Bankruptcy Court. The Attorney General argues that he is likely to succeed on the merits because: (1) despite that the sale of a nonprofit healthcare facility to a public entity is not subject to the 2015 Conditions, he has the extra-statutory power to require a public entity, here, the County, to be bound by the 2015 Conditions under some theory of successor liability; (2) that the 2015 Conditions are not "interests" that can be sold free and clear under § 363(f); (3) he did not waive his right to object to the sale of the Hospitals free and clear of the 2015 Conditions; and (4) he is not equitably estopped from contesting the Debtors' ability to sell the Hospitals free and clear of the 2015 Conditions.

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The Attorney General cannot meet the standards required for a stay because all of these issues are likely to be decided against the Attorney General on appeal, and failing to prevail on even one of these bases is fatal to the Attorney General's stay request.[4]

The Attorney General cannot demonstrate an abuse of discretion that the Bankruptcy Court's findings of fact and legal rulings were incorrect, illogical, implausible, or without support in inferences that may be drawn from the facts in the record (especially here, where the underlying facts concern a litigant's conduct before the Bankruptcy Court). The Bankruptcy Court carefully considered that the Attorney General, even after receiving an opportunity to brief the issue, provided no support in statute or regulations for his assertion that he can impose conditions on buyers in a transaction over which he otherwise has no authority, like the County, under some theory of successor liability. AG Appx. No. 14, at 981-982. In fact, as discussed below, the existing rules make clear that governmental entities are uniquely exempt from Attorney General review and approval as buyers of non-profit healthcare entities. Further, the Attorney General makes no cogent arguments about why § 363(f), a federal statute, does not control over the state laws on which the Attorney General relies with regard to the 2015 Conditions. As held by the Bankruptcy Court, and in the Debtors' prior pleadings, the 2015 Conditions are

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[4] The Attorney General's only change from his failed arguments at the Bankruptcy Court is simply re-ordering his arguments, and he still ignores the fact that he is attempting to exercise extra-statutory power to impose successor liability on a California public entity, a county, despite, as a matter of law, that the sale of a nonprofit healthcare facility to a public entity is explicitly not subject to the 2015 Conditions. This approach, however, does not make his problem go away, and this response will address this issue thoroughly. *Pyro-Comm Sys. Inc. v. W. Coast Fire & Integration Inc.*, 2015 WL 12743687, at *2 (C.D. Cal. Mar. 11, 2015) (criticizing "[t]he ostrich-like tactic of pretending that potentially dispositive authority against a litigant's contention does not exist" as "pointless") (citing *Hill v. Norfolk & W. Ry. Co.*, 814 F.2d 1192, 1198 (7th Cir. 1987)).

precisely the kind of interests that bankruptcy courts nationwide allow to be cut off by a sale pursuant to § 363. AG Appx. 14, at 980-982.

(a) Imposition Of The 2015 Conditions On The County Is Not A Valid Exercise Of The Attorney General's Police And Regulatory Powers.

In the Motion, the Attorney General asserts that the imposition of the 2015 Conditions on the 2015 Transaction was an exercise of his (or at that time her) police and regulatory powers (each or collectively, "Police Power"), and that because some Conditions have not yet expired, they are binding on the County as a subsequent purchaser as a continued exercise of that Police Power. This argument fails for three primary reasons. First, the Attorney General's argument conveniently ignores that the sale to the County is not subject to his review under state law, and that the County is subject to different state legislative requirements regarding care for the uninsured and underinsured. Second, there is no express Police Power exception to § 363, and statutory interpretation principles indicate that Congress knew how to carve out this precise exception where intended, and that it should not be read into another section in the same title—let alone neighboring section—where otherwise omitted. Third, the Attorney General has offered no evidence that his Police Power extends successor liability, apparently as a matter of contractual law, with regard to the Conditions applying to Santa Clara County in contravention of § 363(f) and state law. Accordingly, the Attorney General's Motion fails in this regard.[5]

[5] The cases cited by the Attorney General are Chapter 7 bankruptcy cases involving trustee-controlled pure liquidations that are not sale cases, but rather are abandonment cases and involve the unique, imminent risk of actual hazardous environmental conditions; they merely stand for the proposition that a trustee or a debtor needs to obey the law. These cases are not applicable here and certainly do not outweigh the clear precedent allowing bankruptcy courts to sell estate property free and clear of interests.

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i. The Sale To The County Is Not Subject To Attorney General Review Under State Law.

The Attorney General seeks to expand his authority beyond that provided to him by the California Legislature. Section 5914 of the California Corporations Code ("Section 5914") provides that the sale of a not-for-profit ("NFP") healthcare facility is subject to Attorney General review if the buyer is a (a) for-profit corporation or entity, (b) not-for-profit corporation or entity, or (c) mutual benefit corporation or entity.

Notably, Section 5914 does not apply to the County, a political subdivision of the State of California. A county government is a public entity, not (i) a for-profit corporation or entity, (ii) a mutual benefit corporation or entity, or (iii) a not-for-profit corporation or entity. "A public entity is defined as including "any State or local government." *Vartinelli v. Stapleton*, 2009 U.S. Dist. LEXIS 88553 (E.D. Mich. Aug. 3, 2009). The term "public entity" is used repeatedly in California law. *See, e.g.,* Cal. Pub. Contract Code § 7200(a)(2) ("For purposes of this section, 'public entity' means … [a] county …."); Cal. Pub. Contract Code § 7201(a)(2) ("For purposes of this section, 'public entity' means … [a] county, …."). Based on the plain language of Section 5914, *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004) ("when the statute's language is plain, the sole function of the Court . . . is to enforce it according to its terms."), as the Bankruptcy Court found, the proposed sale to the County is not subject to Attorney General review because a county is not one of the types of entities listed in Section 5914.[6]

This is a substantive distinction, not a technical one. The California Legislature, through its conscious omission of public entities in Section 5914,

[6] The Bankruptcy Court held that "neither Cal. Corp. Code § 5926 nor any of the other provisions set forth in Cal. Corp. Code §§ 5914-30 provide the Attorney General with authority to enforce the Conditions against Santa Clara if Santa Clara acquires the Hospitals." *See* AG Appx. No. 14, at 980 [Bankr. Docket No. 1146, at 9].

specifically allowed public entities (directly responsible to the hospitals' public stakeholders via locally elected officials) to purchase hospitals and ensure health care access through many of the laws applicable to counties that the Attorney General cited in his November 9, 2018 Letter to the County. AG Appx. No. 8, at 902-905 [Bankr. Docket No. 1006]; *see also, generally*, *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 421, 114 S. Ct. 1677, 1697, 128 L. Ed. 2d 399 (1994) (Souter, D., dissenting) ("The local government itself occupies a [unique] market position, however, being the one entity that enters the market to serve the public interest of local citizens . . ."). The plain language of Section 5914 makes abundantly clear the statute's applicability—and corresponding *in*applicability.

Indeed, a *sua sponte* attempt by the Attorney General to supplant California's clear legislative mandate runs afoul of basic Constitutional principles. The right of a legislature to delegate authority to a political subdivision is well established. *See, e.g., Mistretta v. U.S.,* 109 S. Ct. 647 (1989) (citing *J.W. Hampton, Jr. & Co. v. U.S.,* 276 U.S. 394 (1928)). Moreover, California courts have noted that, once vested with legislative authority, a county's failure to exercise such authority violates foundational legal principles. *See Golightly v. Molina,* No. BC436267, 2012 WL 12895078 (Cal. Super., Oct. 16, 2012).

The California Legislature clearly and expressly has delegated relevant legislative authority to the County, and the County retains sole discretion to exercise such authority. The California Constitution divides the State into counties, provides for elected governing bodies for each county, and empowers each county to adopt a charter. Cal. Const., Art XI, § 2. Once adopted, a county's charter "shall supersede any existing charter and all laws inconsistent therewith," and the provisions of such charter "are the law of the State and have the force and effect of legislative enactments." Cal. Const., Art. XI, § 3(a). The Charter of Santa Clara County provides that "the County of Santa Clara is a political subdivision of the

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State of California. It has all the powers provided by the constitution and laws of the state and this Charter. It has such other powers as necessarily implied." Charter of Santa Clara County, art. I, § 100. With regard to the health and welfare of the County's most vulnerable residents, the California Legislature could not be more clear as to where the responsibility lies:

> Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.

Cal. Welf. & Inst. Code § 17000 (West 2019).

Consequently, the Attorney General's invitation to this Court to afford him "deference to interpret" applicable law [Motion, at 14: lns. 21-23] rings hollow because the unambiguous plain language of California law affords him no authority over this transaction. Instead of Attorney General oversight, the County is subject to an entirely different state legal and regulatory scheme; it may not subjugate its duty to act as "compelled by state law" under the Welfare and Institutions Code "among a number of other state laws and requirements," to the 2015 Conditions which were "drafted [with the input and support of the County] for a private out-of-state hedge fund." Supplemental Smith Decl. at ¶¶ 9-13.

Further, the Attorney General's attempt to usurp the County's power and responsibility by arguing that "nowhere has the County committed in any legally enforceable document to provide these essential healthcare services . . ." and "refus[ed] to commit to . . . essential healthcare services" is simply not accurate. Motion at 4, lns. 2-3, 13-15. As demonstrated by the evidence, the County is committed to providing healthcare services to its residents (in compliance with applicable California law), has written to the Attorney General to assure him of the foregoing, and presented a draft of a memorandum of understanding to confirm that the County will continue to provide these services to the Santa Clara County

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community by purchasing and operating the Hospitals. *See* generally, Williams Decl.; Supplemental Smith Decl.; *see also* County to AG Letter, attached to Williams Decl. as Exh. 1.

Under California law, this Court should respect the County's actions because California Welfare and Institutions Code Section 17000 plainly vests in the County, the duty and obligation, to carry out this goal. Given the intersection of these two statutes' primary purpose, the express omission of "governmental entities as buyers" from the ambit of Corporations Code Section 5914 must be viewed as an omission of the Attorney General's authority with regard to governmental entities like the County.

The obvious legislative rationale for excluding a governmental entity buyer from the impact of the charitable trust statute lies in the fact that the County has now, and will continue to have with respect to the acquired assets, wide-ranging legislatively imposed obligations to provide comprehensive care to the poor, uninsured, and underinsured, among many other public duties as well as remaining directly accountable to the Hospitals' patient base at the ballot box. *See, e.g.,* Cal. Gov't. Code §§ 6063, 25350 *et seq.* (sale, lease, improvement, or transfer of property); Health & Safety Code § 1440 *et seq.* (health and safety of county hospital); Cal. Gov't. Code §§ 549501 *et seq.*, 6250 (public reporting, transparency and compliance); Cal. Gov't. Code § 20281 (compulsory membership of County employees in CalPERS); Cal. Gov't Code § 81000 *et seq.* (conflicts of interest); Cal. Const., art. I, § 1 (nondiscrimination); *see also* Supplemental Smith Dec. at ¶¶ 9-13 (discussing commitment to local health and motivation for purchasing the Hospitals under duties of local law to provide and protect County residents).

Indeed, the Attorney General has already conceded his ostensible authority regarding his 2015 Conditions, by: (1) waiving the conditions at the Debtors' request, without any discussion by the Debtors or the Attorney General of the impact on community health services [Debtors' Appx. Nos. 5, 7, at 130-220, 255-

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27 [Bankr. Docket Nos. 254, 794]]; and (2) publicly acknowledging, in writing, that a number of the 2015 Conditions would not be enforced as to the County because of superseding state law on pension obligation assumption; charity care; community benefit obligations; and "robust" public reporting, conflict of interest, and political reform laws; among other local governance issues. *See* AG Appx., at 902-905, Attorney General's letter, dated November 9, 2018, to the County (the "AG to County Letter"), Exhibit 2 to the No Objection Response.[7] Moreover, some of the other 2015 Conditions frankly are illogical as applied to the County. For example, there is a condition that requires the purchaser of the Hospitals to enter into contracts with Santa Clara County.[8] Clearly, the County cannot and should not be obligated to contract with itself, and such an absurd condition confers no public benefit with the County as the purchaser. Thus, based on all of the foregoing, the Attorney General cannot show that he is likely to succeed on the merits.

ii. § 363(f) Contains No Police Power Exception.

The Attorney General asserts in the Motion that the imposition of the 2015 Conditions is an exercise of his Police Power, which continues through a § 363(f)(1) sale despite such sale's defining statutory feature of being "free and clear." However, the statutory text does not suggest the existence of a Police Power exception, and accepted principles of statutory construction further support that no such exception exists. For example, § 362 expressly exempts from the automatic stay acts by a governmental unit in exercise of its Police Power. *See* 11 U.S.C. § 362(b)(4). Section 1519 grants a similar protection to governmental units against

[7] In the AG to County Letter, the Attorney General acknowledged the superseding state Constitutional and statutory law as to five sets of the 2015 Conditions.

[8] The existence of these conditions demonstrates that the Attorney General believed that responsibility for local public health and safety actually lies with the County—which is why O'Connor and St. Louise, when owned by a private entity, were required to contract with the County's public health and health plan departments.

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an injunction in the context of chapter 15 proceedings. *See* 11 U.S.C. §1519(d). The Bankruptcy Code expressly recognizes a third exception to standard procedure regarding public access to papers to entities acting pursuant to a governmental unit's Police Power. *See* 11 U.S.C. § 107(c)(2). Section 363, by distinction, does not contain any such reference to Police Power.

"[I]t is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *Chicago v. Envtl. Defense Fund,* 511 U.S. 328, 338 (1994) (internal quotation marks omitted). "Had Congress intended to restrict" § 363(f) with regard to Police Power, "it presumably would have done so expressly as it did in the immediately" preceding section. *Russello v. United States*, 464 U.S. 16, 23 (1983); *see also In re DBSI, Inc.*, 869 F.3d 1004, 1012 (9th Cir. 2017) (noting that "in the Bankruptcy Code, Congress has demonstrated that it knows how to" limit applicability of a provision). Accordingly, it is the Court's "duty to refrain from reading a phrase into the statute when Congress has left it out." *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993). "To do so would violate a basic principle of statutory interpretation, which advises that when Congress uses particular language in one place in a statute, and does not use that language in another place, the omission should be deemed intentional." *In re Nelson*, 391 B.R. 437, 451 (B.A.P. 9th Cir. 2008).

(iii) § 363(f) Preempts Successor Liability.

Without any support, the Attorney General takes the position that, purportedly under application of contractual law principles, a private party can expand the Attorney General's regulatory reach (beyond that which was provided in statute) to enable himself to regulate the County in this transaction. The Attorney General further asserts that his exercise of Police Power requires the application of non-bankruptcy law to a bankruptcy sale insofar as the 2015 Conditions should attach to the County as successor; in other words, that bankruptcy law providing for

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a "free and clear" sale does not preempt his alleged state law ability to bind the County to the 2015 Conditions. These assertions are as remarkable as they are legally unsupported.

In essence, the Attorney General argues that the ambit of his legislatively conferred regulatory authority—over private entities only—can be, and was, extended to cover public entities, by way of a condition assented to signed by a private entity. Both separation of powers and common principles of statutory construction prevent this attempt to expand the reach of the charitable trusts law in beyond the authority provided for in statute. In that vein, the Attorney General fails to identify any specific "non-bankruptcy law"—either statute or regulation—that allows him to impose the 2015 Conditions on successor entities (especially where, as with the County, he has no power to review the transaction in the first instance). Moreover, broadly speaking, bankruptcy courts have held bankruptcy law to preempt state law with regard to successor liability. *See, e.g., Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 950-51 (Bankr. N.D. Ohio 1987) (holding that bankruptcy law preempts state successor liability law even with respect to a reorganized debtor whose prepetition claims have been discharged free and clear through a plan); *Myers v. United States*, 297 B.R. 774, 784 (S.D. Cal. 2003) (adopting *White Motor Credit Corp.* reasoning in context of § 363(f) sale).

Further, the Attorney General's argument must also fail because it tramples on the supremacy of federal bankruptcy law. The imposition of successor liability in this context would effectively defeat the possibility of selling the Debtors' assets "free and clear" of the liabilities of the Debtors, which would inevitably result in purchasers being unwilling to pay as much for those assets. This would run counter to one of the core policies of the Bankruptcy Code in general, and § 363 in particular, of "maximizing the value of the bankruptcy estate." *See, e.g., Toibb v. Radloff*, 501 U.S. 157, 163 (1991); *Myers*, 297 B.R. at 784 ("In Chapter 11

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proceedings, the Court is trying to obtain and preserve as many assets as it can to protect secured and unsecured creditors. To do so, it needs to approve sales of assets to third parties.").

A sale under § 363(f) expressly allows a debtor to sell assets "free and clear of any interest in such property." The Bankruptcy Court explicitly held the 2015 Conditions at issue in the Motion constitute "an 'interest in property' within the meaning of §363(f)." AG Appx. No. 14, at 979; [Bankr. Docket 1146, at 8]. The Bankruptcy Court previously addressed a similar argument in *In re Gardens*, 567 B.R. 820, 825-830 (Bankr. C.D. Cal. 2017), where the Attorney General asserted that conditions imposed in a proposed sale would be binding on any subsequent buyer. There, the Bankruptcy Court similarly stated that the Attorney General's authority to impose charitable care conditions on a buyer as part of the Attorney General's review of the sale of a not-for-profit hospital was an "interest in property" that can be stripped off the assets through a sale under § 363. *Id.*. Both rulings are consistent with rulings by many courts which have interpreted "any interest" expansively to include not only in rem interests in property, but also other obligations that are "connected to or arise from the 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)).

Courts have further held that such conditions can be cut off by a sale under § 363. For example, in *In re Tougher Industries*, 2013 WL 1276501 (Bankr. N.D.N.Y. March 27, 2013), Tougher Industries Enterprises, LLC and Tougher Mechanical Enterprises, LLC, bought substantially all of the assets of debtors in a sale under § 363. After the sale closed, the New York Department of Labor imposed on the buyers an elevated experience rating for the purposes of calculating their unemployment insurance premiums based on the high experience rate of the predecessor companies. *Id.* at *2 The purchasers went back to court and argued

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that the assets they purchased were free and clear of any interests, including the debtors' not-so-favorable experience rating. *Id.* at *3. The bankruptcy court agreed with the purchaser. *Id.* at **6-9. Similarly, the First Circuit Bankruptcy Appellate Panel has concluded that "the transfer of an employer's unemployment insurance contribution rate to a successor asset purchaser is really an attempt to recover the money that the predecessor employer would have paid if it had continued in business" and therefore is an "interest" from which the property can be sold free and clear under § 363. *In re PBBPC, Inc.,* 484 B.R. 860, 869 (B.A.P. 1st Cir. 2013). The imposition of the 2015 Conditions is much like the experience rating or the unemployment insurance ratings, and should be subject to § 363.

Not only has the Attorney General failed to support his position that bankruptcy law does not preempt "non-bankruptcy law" on this point, but courts have recognized that states that impose conditions on buyers that require the buyers to fulfill a debtor's obligations actually violate the Bankruptcy Code. *See, e.g., In re Aurora Gas, LLC,* 2017 WL 4325560 at *7 (Bankr. D. Alaska Sep. 26, 2017) (holding that state's condition to its approval of sale in bankruptcy that buyer pay debtor's unpaid state law obligations violated the Bankruptcy Code and was unenforceable).

(b) The Attorney General Waived His Objection To The Sale.

The Attorney General will also not prevail on his appeal of the Bankruptcy Court's waiver finding because (i) the Attorney General does not provide any arguments that he did not mislead the Debtors and that the Debtors did not rely on his misleading statements, and (ii) the Bankruptcy Court correctly applied the law to uncontroverted facts.

"[A] court's conclusion regarding discretionary waiver of an issue or claim by failure to timely assert it in litigation . . . is reviewed for abuse of discretion." *Nikko Materials USA, Inc. v. NavCom Def. Elecs. Inc.*, 534 Fed. Appx. 656, 657 n. 1 (9th Cir. 2013). The Bankruptcy Court deserves deference by an appellate court

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when reviewing the fact issue of whether a party's conduct in the Bankruptcy Court was waiver. *Cf.* Motion at 14 (". . . waiver is a question of fact. . ."); *In re Irwin*, 338 B.R. at 844 ("on appeal to the district court from the bankruptcy court . . . the district court is constrained to accept the bankruptcy court's findings of facts unless they are clearly erroneous.").

The Bankruptcy Court correctly identified the law that "[w]aiver is the voluntary relinquishment of a known right or conduct such as to warrant an inference to that effect. It implies knowledge of all material facts and of one's rights, together with a willingness to refrain from enforcing those rights," and that "[w]aiver also occurs when a party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished." *See* Sale Decision, AG Appx. 14, at 976 [Bankr. Docket No. 1146, at 5].[9]

The Bankruptcy Court also correctly identified the central, uncontroverted facts that established the Attorney General's waiver (and estoppel, *infra*):

- "The [No Objection] Response provided: 'The California Attorney General *does not object* to the sale to the County of Santa Clara [….]'" (emphasis added by the Bankruptcy Court);

- "[The No Objection Response] contained no reservation of the Attorney General's right to object in the event that the contemplated 'further requests for clarification or modification presented by the County' did not yield results acceptable to the Attorney General;"

- "[T]he Attorney General knew that the Debtors were seeking approval of a sale free and clear of the Conditions, because the APA [filed two months before] contained unequivocal language to that effect."

[9] (citing *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 955 (9th Cir. 2014); *Salyers v. Metro. Life Ins. Co.*, 871 F.3d 934, 938 (9th Cir. 2017)).

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- And, as stated *supra*, in open court in the Bankruptcy Court, while attempting to assert his objection, notwithstanding his written non-objection, the Deputy Attorney General again re-stated that the Attorney General did "not want to stop the sale of the hospitals."

See Sale Decision, AG Appx. 14, at 976-978; *see also* Transcript of Sale Hearing, Debtors' Appx. No. 13, at 339-391.

Given these facts, the Bankruptcy Court's exercise of discretion was proper, and the Attorney General cannot establish any abuse in discretion. For example, in *In re Konig*, 2015 WL 5076977, at *7 (Bankr. C.D. Cal. Aug. 27, 2015), the court held that when an objection was filed objecting on only one ground that this was a waiver of an objection of another ground that the party was aware of but failed to include. Here, the facts are even stronger, with an affirmative statement of no objection by the Attorney General. Also, in *In re Colarusso*, 280 B.R. 548, 560 (Bankr. D. Mass. 2002), *aff'd*, 295 B.R. 166 (B.A.P. 1st Cir. 2003), *aff'd*, 382 F.3d 51 (1st Cir. 2004), a party waived her right to object when she "deliberately failed to object throughout a bankruptcy sale process in which she was an active participant [and h]er conduct induced the other parties to the transaction to reasonably rely on the finality of the proceedings [.]"[10]

Likewise, here, the Attorney General knew of the relevant facts and circumstances and was an "active participant in the bankruptcy sale process," but represented to the Debtors and interested parties that "the California Attorney General does not object to the sale to the County of Santa Clara [. . .]." AG Appx.

[10] *See also Rivero v. J.P. Automobiles, Inc.*, 1997 WL 35386195, at *6 (D. Haw. Aug. 5, 1997) ("Defendant is estopped [because] Defendant is bound by the statements contained in its own filings with the Court."); *In re Silberkraus*, 253 B.R. 890, 910 (Bankr. C.D. Cal. 2000), aff'd, 336 F.3d 864 (9th Cir. 2003) (applying LBR 9013-1) (failure to timely object to motion is "waiver" of right to object).

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No. 8, at 895 [Bankr. Docket No. 1066]. As the Bankruptcy Court recognized, in a kinetic, swirling bankruptcy sale process, written filings are particularly important, and the Attorney General waived the right to object. AG Appx. No. 14, at 977 [Bankr. Docket No. 1146 at 6] (finding that condoning the practice of flipping from "no objection" in a public filing to objecting after the objection deadline for "even . . .only a fraction of the parties who have filed papers" would cause the "adjudicative process [to] grind to a halt" in bankruptcy sale contexts). This Court should likewise defer and trust the Bankruptcy Court's judgment and factual finding that the Attorney General waived his right to stop the Sale when he said he did not object to it and offered no new evidence or circumstances as to why he changed his mind.

In fact, the Attorney General does not even attempt to oppose the Bankruptcy Court's findings as to the Debtors, but instead focuses solely on the County. *See* Motion, at 15. This complete omission by the Attorney General to address the Bankruptcy Court's explicit finding of waiver *as to the Debtors*—the guardians of the estates whose assets are being sold—is itself a waiver on appeal. Further, as correctly found by the Bankruptcy Court, parol statements are not relevant to alter a court filing,[11] and a statement by the Attorney General is only valid for its defense against the *Debtors'* waiver argument if made to or received by *the Debtors*. *See Houk v. Vill. of Oak Lawn*, 86 C 139, 1987 WL 7498, at *2 (N.D. Ill. Feb. 26, 1987)

[11] AG Appx. No. 14, at 976-977; [Bankr. Docket No. 1146], at 5. The Court also correctly found that, under the Federal Rules of Evidence, unrecorded, alleged parol and oral conversations between the parties taking place before the filing of the No Objection Response were superseded by an official filing and that "parties are entitled to presume that representations made by the Attorney General in papers filed with the Court accurately reflect his position. Allowing the Attorney General, or any other party, to qualify statements made in papers through the subsequent introduction of parol evidence would unduly hamper the Court's ability to adjudicate matters arising in this case." AG Appx. No. 14, at 977-78, [Bankr. Docket No. 1146 at 5-6].

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(determining relevancy of statement for waiver "what matters is when each [party] heard those statements"). The Attorney General has no evidence and no theory to rebut the Bankruptcy Court's factual finding and exercise of discretion.

(c) The Attorney General Is Estopped From Objecting To The Sale.

The Bankruptcy Court correctly identified the four elements of equitable estoppel: 1) The party to be estopped must know the facts; 2) the party must intend that their conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; 3) the latter must be ignorant of the true facts; and 4) the party asserting the estoppel must rely on the former's conduct to his injury. *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 955 (9th Cir. 2014); AG Appx. No. 14, at 978; [Bankr. Docket No. 1140]. Applying these factors, the Bankruptcy Court found:

> The Attorney General knew that the Debtors and Santa Clara would rely upon the Response's representation that he had no objection to the sale. *The Debtors and Santa Clara had no way of knowing that when the Attorney General stated that he did 'not object to the sale to the County of Santa Clara,' what he really meant was that he did not object except to the extent that he did object*. The Debtors and Santa Clara relied upon the Attorney General's representation to their detriment. Had they been aware of the Attorney General's true position, the Debtors and Santa Clara would have more vigorously contested the Attorney General's arguments regarding the binding effect of the Conditions

Id. (emphasis added).

(i) The Attorney General only argues that he is not estopped as to the County, but fails to address his conduct towards the Debtors and its effect.

The Attorney General is not entitled to relief, particularly when he blatantly ignores key adverse facts and findings against him regarding estoppel. Indeed, he continues to not to make any arguments related to the Debtors (despite the Bankruptcy Court's ruling), but instead entirely focuses on the County (except for a

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generic and inexplicable statement that the Debtors would not be injured by a loss of a $235 million sale). Moreover, the Attorney General's arguments regarding alleged discussions with the County (about his purported intentional filing of a contradictory written representation) where the Debtors were not present and did not participate are irrelevant in the estoppel context because "equitable estoppel requires affirmative actions ***towards the party claiming estoppel***." *San Diego Comic Convention v. Prod.*, 2018 WL 4026387, at *3 (S.D. Cal. Aug. 23, 2018) (emphasis added). So, for "the question of estoppel, while the intention of the parties sought to be estopped may be significant, ***the emphasis is on the actions of the party arguing estoppel***." *Mitchell v. Aetna Cas. & Sur. Co.*, 579 F.2d 342, 347 (5th Cir. 1978). The alleged discussions between the County and the Attorney General—to the extent they are relevant at all— have no bearing on the Bankruptcy Court's finding that the Debtors relied on the Attorney General's filing that it had no objection to the sale. Allowing the Attorney General to wait in the weeds until the literal eve of a hearing, where every other party properly noticed and presented timely objections, would be inequitable.

(ii) The Bankruptcy Court properly found that it would be inequitable for the Attorney General to assert an objection after the Debtors and other parties relied on the Attorney General's statements of no objection.

Regardless, the Bankruptcy Court's exercise of discretion, founded on its observation and experience of the Sale process and its docket and common sense (for instance, it is reasonable to understand that the words "does not object" mean that the party will not object) should not be overturned. *See Karcsh v. Bd. of Directors Ventura Country Club Cmty. Homeowners Ass'n*, 2011 WL 1740626, at *4 (E.D. Pa. May 5, 2011) (raising equitable estoppel sua sponte) ("Plaintiffs in effect represented to Defendant and to me that they did not object to Defendant's [action]. Defendant reasonably relied on that representation, and would be harmed

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if I allowed Plaintiffs to contradict that representation. Accordingly, Plaintiffs are equitably estopped from contradicting their representation [of no objection] . . .”); *In re Newport Offshore, Ltd.*, 86 B.R. 325, 326 (Bankr. D.R.I. 1988) (finding estoppel) (failure to object was done “knowing that its silence and inaction would be interpreted as assurance that the [party’s] right [would not be asserted] and “reliance in that regard is deemed by the Bankruptcy Court to be reasonable”).[12] This Court should accordingly uphold the Bankruptcy Court’s factual finding of estoppel.

2. The Attorney General Will Not Suffer Irreparable Injury.

The Attorney General argues that he will suffer “irreparable injury” by being denied his police and regulatory powers to enforce the 2015 Conditions because the closing of the Sale, in conjunction with the Bankruptcy Court’s finding that the County is a good faith purchaser within the meaning of § 363(m), will render the appeal moot.

There is, however, no injury to the Attorney General here at all from the sale of a hospital to a California county in accordance with California law, much less irreparable harm. In denying the Attorney General’s attempt to stop another sale of a hospital under another unsupported legal theory, the District Court, in this District, correctly interpreted the “irreparable harm” factor as “wholly dependent” upon the “merits” factor, and found “in light of the Court’s conclusion that the Attorney General has established at best a minimal likelihood of success on the merits, the Court also concludes that the possibility of irreparable harm is slight.”

[12] Further, the Attorney General is misplaced in relying on California law and California cases for the question of waiver or estoppel in a bankruptcy sale because “where federal statutes determine rights and liabilities, the federal common law, rather than state law, is controlling” with regards to defenses such as estoppel and wavier. *Thurber v. W. Conference of Teamsters Pension Plan*, 542 F.2d 1106, 1108 (9th Cir. 1976) (applying federal common law to equitable estoppel of a litigation right).

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In re Gardens Reg'l Hosp. & Med. Ctr., Inc., 2:16-BK-17463-ER, 2017 WL 8186903, at *4 (C.D. Cal. June 6, 2017).

Here, as concluded by the Bankruptcy Court and discussed above, the applicable statutes make clear that the Attorney General has no right to review this Sale nor to impose conditions on the County in the context of this Sale. The Attorney General cannot (and does not) point to any authority which gives him the power to impose these 2015 Conditions through successor liability (other than the mere Conditions themselves) on the County. While the 2015 Conditions he seeks to impose on the County purportedly are meant to further the health and safety of the communities served by the Hospitals when owned by a private entity, the uncontroverted evidence indicates that the Attorney General's litigation places more of a risk on the continued viability of the healthcare services provided by the Hospitals than a sale to the County does. *See*, *infra*, AG Appx. No. 16, at 1150, the Supplemental Smith Decl. at ¶ 14; AG Appx. No. 16, at 1141-42, Declaration of Paul E. Lorenz, (the "Lorenz Dec.") at ¶ 4; AG Appx. No. 18, at 1123, Declaration or Richard G. Adcock (the "Adcock Dec.") at ¶ 7.

Finally, in the context of bankruptcy, as held by the Bankruptcy Court,[13] a majority of courts have concluded that the explicit **statutory policy** of mootness does not demonstrate irreparable injury. *See, e.g., Ohanian v. Irwin (In re Irwin)*, 338 B.R. 839, 853 (E.D. Cal. 2006) ("It is well settled that an appeal being rendered moot does not itself constitute irreparable harm"); *In re Red Mountain Mach. Co.*, 451 B.R. 897, 908-09 (Bankr. D. Ariz. 2011) (internal citations omitted) ("[T]he law is clear in the Ninth Circuit that irreparable injury cannot be shown solely from the possibility that an appeal may be moot"); *In re Convenience USA, Inc.*, 290 B.R. 558, 563 (Bankr. M.D.N.C. 2003) (stating that "a majority of the cases which have considered the issue have found that the risk that an appeal may become moot

[13] *See* Debtors' Appx No. 11, at 324-333 [Bankr. Docket No. 1418, at 7].

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does not, standing alone, constitute irreparable injury" and citing cases). Moreover, even if the Court concluded there would be irreparable harm to the Attorney General, a stay pending appeal is not a matter of right "even if irreparable injury might otherwise result." *Nken*, 556 U.S. at 427.

3. The Issuance Of The Stay Will Substantially Injure The Debtors, The County, And Other Parties Interested In The Proceeding.

Next the Court must consider whether issuance of the stay will substantially injure the other parties interested in the proceeding. *See, e.g., Nken*, 556 U.S. at 426. Here, a balancing of hardships tips sharply in favor of the Debtors, the County, the community of patients within the County and the remaining estate stakeholders, all as compared to the Attorney General.

(a) There Is No Measurable Detriment To The Attorney General

First looking at the Attorney General, as in the bankruptcy hospital case of *In re Gardens*:

> [D]enial of a stay will most likely result in the Attorney General being unable to obtain appellate review of the Court's decision. This injury is less severe than the financial injury the Debtor would likely suffer were a stay issued, because the Court has found that the Attorney General's appeal is unlikely to succeed and does not raise serious legal questions.

567 B.R. at 832. To the extent the Attorney General argues he is acting on behalf of the public interest in healthcare, again, the California Legislature has already spoken on this point, and in fact, the communities in the County will receive greater benefit from the instant sale to a public entity directly responsible to them and devoted to providing them with critical healthcare than to risk losing their access to hospitals altogether in the nominal pursuit of conditions meant to bind non-public purchasers. *See*, *infra,* subsection (c) (testimony by local officials supporting operation of the Hospital and the sale as beneficial to the community, with the alternative closure as devastating to local health).

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(b) A Stay Would Cause Substantial Injury To The Debtors, The County And Other Interested Parties

Alarmingly, the Attorney General glosses over any discussion of the harm to the Debtors' estates and the Santa Clara County community. Such interested parties, however, will all incur tremendous injury should a stay be imposed, none of which the Attorney General squarely addresses in the Motion. Similar to *In re Gardens*, "[t]he injury to the Debtor resulting from issuance of a stay will be substantially greater than the injury to the Attorney General from denial of a stay. The estate is in a precarious financial position and is desperately in need of the funds from the sale." *See* 567 B.R. at 832; *see also* AG Appx. No. 18, at 1123 (Adcock Dec., at ¶ 6) (testimony of Debtors' CEO). Thus, issuance of a stay would most likely cause the present sale to collapse, depriving the estate of much-needed funds. *Id.*; *see also* Supplemental Smith Dec. at ¶¶ 16, 18 ("[I]f this Court were to issue an order granting the [Motion], the stay would effectively terminate the [Sale] Transaction . . . If closing does not occur by February 28, 2019, the APA is effectively terminable by either the County [or the Debtors and] pragmatically and expressly by the terms of the APA, a stay would effectively terminate [the Sale]").

Under the Debtors' DIP financing agreement approved by the Bankruptcy Court ("DIP Financing"), there is a finite budget for concluding the Debtors' sale process. Debtors' Appx. No. 17 [Bankr. Docket No. 409]. A failure to close the sale would have a major impact on the Debtors' borrowing base ("Borrowing Base") under the DIP Financing. The Borrowing Base includes "(a) eighty-five percent (85%) of the Net Collectible Value of the Eligible Accounts, plus … (c) ninety-five percent (95%) of the amounts held in the Escrow Deposit Account" [Debtors' Appx. No. 16; Bankr. Docket No. 309-2, at 29], which is the same as the "Sales Proceeds Escrow Account" under the paragraph 13(a) of the Sale Order. AG Appx. No. 15, at 997 [Bankr. Docket 1153, at 13]. Absent the sale closing, the Debtors' ability to fund operating losses or administrative expenses would be

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dramatically more limited, independently of any agreed DIP Financing budget constraints. The ability to borrow against the proceeds of the sale is a critical aspect of the DIP Financing, which the Bankruptcy Court concluded was "necessary, essential and appropriate" for the reorganization. Debtors' Appx. No. 17 [Bankr. Docket No. 409, at 15]. Without that, the Debtors ability to successfully reorganize in chapter 11 may be impossible.

This "threat of being driven out of business is sufficient to establish irreparable harm." *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 17 1470, 1474 (9th Cir. 1985); *see also Ross-Lino Beverage Distribs., Inc. v. Coca-Cola Bottling Co. of N.Y., Inc.*, 749 F.2d 124, 125-26 (2d Cir. 1984) (loss of "an ongoing business . . . constitutes irreparable harm"). The Hospitals have already lost more than 100 employees between September 3 and December 28, 2018. *See* AG Appx. No. 18, at 1129; Mills Dec., at ¶ 13 (testimony of the Director of Employee Services Agency for the County). There is a serious concern "that a stay of the Sale order and the resulting delay to the [timelines necessary to close the transaction on time in accordance with the APA] will cause serious uncertainty among the remaining employees of the Hospitals about the likelihood of [the County] acquiring the Hospitals." *Id.* In turn, "[s]uch uncertainty will likely result in knowledgeable and experienced employees at the Hospitals continuing to leave at an accelerated rate." Supplemental Smith Dec., at ¶ 19.

Additionally, were the stay imposed, the Debtors would effectively be barred from pursuing sales of any hospitals, pursuant to an asset purchase agreement that contained provisions implicating the conditions until the disposition of the Attorney General's appeal of the Sale Order, which could take many months, if not years. During such time, the Debtors' ability to sell hospitals, prosecute a plan, and emerge from bankruptcy would be completely constrained and most likely would lead to the closure of the Hospitals. The Debtors also would be forced to incur the expense and bear the uncertainty of maintaining their chapter 11 cases while

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waiting in appellate limbo. This ultimately has an adverse impact not only on the Debtors, their employees, the patients at the Hospitals and the communities they serve, but on all estate stakeholders, who—like the County—can only materially benefit from the sale of the Hospitals as a going concern. AG Appx. No. 18, at 1148-1149 (Smith Dec., at ¶ 11) ("More delay . . . means that the value of the Hospitals – as functioning businesses – substantially diminishes. . . . [T]he County was only willing to pay $235 million for functionally operating hospitals, not just for the real estate and physical structures."). The Attorney General neglects to address this reality, instead simply arguing that the only conceivable harm to the Debtors or their stakeholders from a stay is the prospect of delayed distribution.

Furthermore, the County has already "take[n] numerous actions and expend[ed] significant resources in reliance on [the Sale Order]" on both the labor and operational side, which efforts may be for naught should the sale be stayed. *See* AG Appx. No. 18, at 1136 (Mills Decl., at ¶ 14); AG Appx. No. 18, at 1142, Lorenz Dec., at ¶ 5 (testimony of CEO of Santa Clara Valley Medical Center) ("[T]he County is currently engaged in a major, costly, and very labor-intensive effort to successfully onboard" approximately 1,100-1,400 Hospital staff and more than 800 physicians). AG Appx. No. 18, at 1148 (Smith Dec., at ¶ 9); AG Appx. No. 1, at 142 (Lorenz Dec., at ¶ 5). For example, since the Sale Order was entered, the County has invested more than 1,600 staff hours in holding almost daily "Information and Employment Fairs," which has led to the collection of almost 1,800 applications from employees and physicians, all with a view of making onboarding successful. *See* AG Appx. No. 18, at 1126-27 (Mills Dec., at ¶¶ 5-6, 8). The County's staff have also invested approximately 550 staff hours in acquisition-related meetings. AG Appx. No. 18, at 1127; Mills Dec., at ¶¶ 9-10. Not only do these onboarding efforts have an approximate sunken value of $565,000 in man-hours ($140,000), licensing fees ($250,000), consulting fees ($60,000), and good-faith non-refundable vendor payments ($115,000), AG Appx. No. 18, at 1127

(Mills Dec., at ¶ 11); AG Appx. No. 18, at 1142-44 (Lorenz Dec., at ¶¶ 6, 9, 10), but such efforts will be valueless in the case of a stay that "slows down or partially suspends these activities for even a brief period" because they will be "virtually impossible" to complete within the APA closing timeframe. AG Appx. No. 18, at 1148 (Smith Dec., at ¶ 9); *see also* AG Appx., 18 at 1127-29 (Mills Dec., at ¶ 12) (County-established onboarding timeline); AG Appx. No. 18, at 1142-43; (Lorenz Dec., at ¶ 7). And even if they could ultimately complete the onboarding currently envisioned as necessary, such efforts may be drastically challenged if current Hospital employees continue to leave at the current rate, as such "likely loss of knowledgeable and experienced employees has the potential to significantly harm the County's ability to operate the Hospitals following acquisition." *See* AG Appx., No. 18, at 1129 (Mills Dec., at ¶ 13).

Similarly, the Debtors have also taken numerous actions and expended significant resources in reliance on the Sale Order on both the labor and operational side. By way of example, more than 100 employees of VHS, the Hospitals, and the Debtors' professionals have been working diligently with representatives of the County on transfer of the Hospitals' operations. AG Appx. No. 18, at 1123 (Adcock. Dec., at ¶ 7). Numerous other third parties, perhaps with equal or a greater number of employees, were also engaged to provide support, counsel, and labor to make this transition happen. A joint Steering Committee and a joint Work Group meet weekly to review the status of all tasks being performed on the sale, and an internal team of VHS personnel meets weekly on the preparation of the Transition Services Agreement ("TSA"). AG Appx. No. 18, at 1123 (Adcock. Dec. at ¶ 8). These Committees have drafted policy, strategy and "a practical road map" for the lower transitional working groups, which were formed to address specific transition issues, such as IT, Revenue Cycles, Human Resources, Supply Chain Management, Finance, Quality and Clinical Performance, and Capital Equipment. Substantial time is also being spent on communications and public relations,

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including, among other things, meetings with employees and public relations advisors and conducting "question and answer" sessions for the Medical Staff and County Executives. AG Appx. No. 18, at 1124-25 (Adcock. Dec. at ¶ 9-10).

(a) A Stay Could Cause Loss Of Health Care Access To The Communities

Not only will the County, along with their taxpaying citizens suffer the expense of this transaction should it be lost, but the County's patient communities will also suffer costs beyond monetary measure. For example, if the Hospitals close, "*communities in the County will lose significant access to critical health care*." AG Appx. No. 18, at 1150 (Smith Dec., at ¶ 14) (emphasis in original); *see also* AG Appx. No. 18, at 1141-42 (Lorenz Dec., at ¶ 4) ("It is critical for these hospitals to remain open and operating to ensure access to care."); AG Appx. No. 18, at 1151-52, Declaration of Sarah Cody, M.D. ("Cody Dec.")), at ¶ 7 (testimony of County Public Health Officer) ("If Saint Louise [Hospital] were to close, residents of southern Santa Clara County would be forced to travel long distances to access basic hospital services, and as a result, their health would be at significant risk."). "This loss would be particularly devastating to residents of southern Santa Clara County, as Saint Louise Hospital is the only hospital in the region." AG Appx. No. 18, at 1150; Supplemental Smith Dec., at ¶ 14; *see also* AG Appx. No. 18, at 1141-42 (Lorenz Dec., at ¶ 4 (attaching "[a] map of the region's hospitals, to illustrate geographically the impact a closure of these hospitals, particularly SLRH, would have on residents of Santa Clara County and neighboring counties"); AG Appx. No. 18, at 1151-52 (Cody Dec., at ¶ 7) (noting Saint Louise is the only hospital in the southern portion of the County). "The serious impacts of the closure of Saint Louise would not be limited to Santa Clara County [because] San Benito County residents […] are heavily dependent on Saint Louise for access to critical health services, as Saint Louise offers far more extensive care than is available" at

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the only hospital in their county. AG Appx. No. 18, at 1152-53 (Cody Dec., at ¶ 8-10).

In the opinion of the County Executive, a former practicing physician in public hospital systems in California, the closure of the Hospitals "will very likely mean that some people will suffer needless delay in obtaining critical healthcare and that such delays may imperil lives." AG Appx. No. 18, at 1150; Supplemental Smith Dec., at ¶ 14); *see also* AG Appx. No. 18, at 1152-53 (Cody Dec. at ¶¶ 7, 10).

Without addressing any of the foregoing evidence in the record, the Attorney General argues that, without the Stay, "essential services that **may** be lost include emergency services," among other services. Motion, at 17, lns. 18-22 (emphasis added). However, the only evidence the Attorney General offers in support of this argument is testimony that the 2015 Conditions address essential services. Motion at 17, ll. 18-22 (citing appended Declaration of Phil Dalton at ¶ 3). Notably, the Attorney General presents **no** testimony to support the argument that the County would not continue to provide such services. By contrast, the County has presented direct evidence that it will continue its "longstanding commitment to providing comprehensive and essential healthcare services, including 24-hour emergency and trauma services, intensive care and neonatal intensive care; coronary care and stroke care; cancer treatment obstetric, reproductive and other women's health care services, pediatric care; sub-acute care; diagnostic imaging services; and surgical services; all in a welcoming, non-discriminatory environment," in owning and operating the Hospitals, and has represented as such to the Attorney General. Supplemental Smith Decl. at ¶ 9; County to AG Letter attached to Williams Decl. The unrebutted detailed, comprehensive testimony from top-level, knowledgeable and dedicated County officials discussed herein regarding their mission and plan for the Hospitals to continue to serve the Santa Clara community—especially Dr. Smith's most recent affirmance above countering the Attorney General's alleged concerns—supports the Bankruptcy Court's conclusion that the closure or a drastic

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reduction in the quantity and quality of services from the Hospitals is made significantly more likely through a Stay than without it.

Accordingly, the balance of hardships is very clearly tipped against the Attorney General.

4. The Public Interest Weighs Sharply in Favor of Denying the Stay.

In *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 2017 WL 8186903, at *4, the district court (in this District) held that the "Attorney General's argument regarding what serves the public interest is dependent upon a statutory right to exercise any authority over the sale of [the debtor's] assets." Therefore, "in light of this dependent relationship, and in light of the Court's conclusion that the Attorney General ha[d] not established a likelihood of success on the merits, the Court conclude[d] that it [was] highly unlikely that the public interest [would] be served by the imposition of a stay." *Id.* Similarly, here, the Attorney General's argument regarding what serves the public interest is dependent upon a statutory right to exercise any authority over the sale of the Hospitals to the County. Since the Attorney General does not have the statutory right to review the sale for the reasons discussed above, and, thus, is not likely to succeed on the merits, no public interest would be served by the imposition of a stay.

Additionally, in the previous section, the Debtors showed that the public interest is not served by a stay of the Sale Order due to the potential harm to the communities in the County who would be seeking the critical healthcare the Hospitals provide and/or the stakeholders of the estate who constitute the interested "public."

Moreover, "[t]here is a great public interest in the efficient administration of the bankruptcy system." *In re Fuentes*, Case No. 2:13-bk-11518-ER, 2018 WL 921966, at *3 (Bankr. C.D. Cal. Feb. 15, 2018) (quoting *Adelson v. Smith (In re Smith)*, 397 B.R. 134, 148 (Bankr. D. Nev. 2008)). In this case, as in *In re Gardens*, "a stay could cause the sale to collapse, seriously injuring the estate." *See*

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567 B.R. at 832. And to consider this factor framed as another balancing test, "the public's interest in the Attorney General's ability to obtain appellate review with respect to an important state law issue is outweighed by the public's interest in efficient administration of the bankruptcy system, particularly in view of the Bankruptcy Court's determination that the Attorney General's appeal is unlikely to succeed." *In re Gardens*, 567 B.R. at 832.

In the Motion, the Attorney General downplays the effect delay of distribution may have on stakeholders, but that point actually goes to the public interest as "[t]he public policy behind bankruptcy is the equality of distribution to creditors within the priorities established by the Code within a reasonable time." *In re Doctors Hosp. of Hyde Park, Inc.*, 376 B.R. 242, 249 (Bankr. N.D. Ill. 2007) (citing *Begier v. I.R.S.,* 496 U.S. 53, 58 (1990); *In re Metiom, Inc.*, 318 B.R. 263, 272 (S.D.N.Y. 2004) ("The Court finds that the public interest in the expeditious administration of bankruptcy cases as well as in the preservation of the bankrupt's assets for purposes of paying creditors, rather than litigation of claims lacking a substantial possibility of success, outweighs the public interest in resolving the issues presented here on appeal."); *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 284 (Bankr. S.D.N.Y. 2007) ("the public interest cannot tolerate any scenario under which private agendas can thwart the maximization of value for all").

The Attorney General has filed an appeal of the Sale Order that has little to no likelihood of success on the merits in yet another attempt to derail the Debtor's efforts to maintain the Hospitals for the benefit of the communities they serve, preserve employee jobs, and continue to provide health care access and patient care. The patients and creditors should not bear the risks and costs of the Attorney General's meritless appeal. Such a result is clearly contrary to the public interest, especially where the purchaser "occupies a [unique] market position, . . . being the one entity that enters the market to serve the public interest of local citizens." *C & A Carbone*, 511 U.S. at 421 (Souter, D., dissenting). Instead, the Debtors should be

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permitted to achieve what they set out to do when they commenced their Chapter 11 Cases—to maintain patient care while enabling a safe and prompt transfer of these important hospitals to new owners with the financial wherewithal to continue to fulfill their charitable mission, provide for the health and well-being of their patients and honor their debt obligations.

Public interest is also served by equitable access to healthcare across demographics. The populations of southern Santa Clara County and San Benito County are predominantly Latino. AG Appx. No. 18, at 1152 (Cody Dec., at ¶ 11). According to the County's Public Health Officer, "Latino residents of both counties already experience significant healthcare access disparities as compared to white residents." AG Appx. No. 18, at 1152 (Cody Dec., at ¶ 12). Specifically, "[t]wenty percent of Latino residents of Santa Clara County report that they could not see a doctor in the past twelve months due to cost, compared to eleven percent of the County population overall." *Id.* Based on her expertise, she believes that "[c]losure of Saint Louise hospital would significantly exacerbate these disparities by disproportionately denying the residents of these communities with access to proximate hospital care." *Id.* This is another reason why a stay which endangers continued operation of Saint Louise Regional Hospital is against the public interest—with such public interest being best represented by the County where the Hospitals are located.

C. IF THIS COURT WERE TO GRANT THE STAY, THE ATTORNEY GENERAL SHOULD BE REQUIRED TO POST A BOND IN THE AMOUNT OF $350,000,000.

Bankruptcy Rule 8007 allows the Court to condition a stay pending appeal on the filing of a bond. *See In re Roussos*, No. 2:15-BK-21624-ER, 2017 WL 889312, at *1 n.1 (Bankr. C.D. Cal. Mar. 6, 2017). The purpose of such a bond "is to protect the adverse party from potential losses resulting from the stay." *In re United Merchs. & Mfrs., Inc.*, 138 B.R. 426, 430 (D. Del. 1992). "[T]he Court has discretion in determining the sufficiency of the supersedeas bond and the adequacy

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of the surety." *In re Roussos*, No. 2:15-BK-21624-ER, 2017 WL 889312, at *1 n.1 (citing *Farmer v. Crocker Nat'l Bank (In re Swift Aire Lines, Inc.)*, 21 B.R. 12, 14 (B.A.P. 9th Cir. 1982); *see also Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 782 (10th Cir. 1964) (referring to such discretion as "wide"). A bond is necessary where the stay is "likely to cause harm by diminishing the value of an estate or endanger [the non-moving parties'] interest in the ultimate recovery . . . ." *In re Adelphia Commc's Corp.*, 361 B.R. at 368 (internal quotation marks omitted). Courts may only waive the bond requirement in "exceptional circumstances," *id.*. at 350, and only where the movant has met its "burden of demonstrating why the court should deviate from the ordinary full security requirement." *See In re 473 W. End Realty Corp.*, 507 B.R. 496, 501-02 (Bankr. S.D.N.Y. 2014).

Here, any stay would, among other risks, put the pending sale at risk, thereby putting the Debtors' businesses at risk of loss of funding and liquidation, and its patients at risk, and impose added expenses of administering the Chapter 11 Cases, and would diminish creditor recoveries. If a stay pending an appeal is to be granted, it is the Attorney General as appellant who is required to bear the risk of loss and who must fully protect the Debtors, their creditors and other stakeholders from the harm resulting from an unsuccessful appeal. Accordingly, if the Court were to grant a stay, the Court should require the Attorney General to post a bond in the amount of $350 million, and in no event less than $235 million.

While this amount is significant, so are the underlying circumstances and financial stakes, and the supersedeas bond must be posted in an amount sufficient to protect the Debtors and other parties interested in these cases against the harm that will result as a result of the stay. *See In re Tribune Co.*, 477 B.R. 465, 482 (Bankr. D. Del. 2012) (conditioning a stay upon the posting of a $1.5 billion supersedeas bond); *In re Adelphia Commc'ns Corp.*, 361 B.R. at 368 and n.166 (requiring a $1.3 billion bond as justified by the "financial risks" of the stay); *see also Price v. Philip Morris Inc.*, No. 00-L-112, 2003 WL 22597608, at *30 (Ill. Cir. Ct. Mar. 21, 2003),

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rev'd on other grounds, 219 Ill. 2d 182, 848 N.E.2d 1 (2005) (requiring a $12 billion bond on stay of execution of judgment pending appeal).

The Attorney General is not entitled to a free "litigation option" to pursue his appeal to the detriment of all other parties without an obligation to make them whole if his appeal is unsuccessful but, simultaneously, destroys the value in the Debtors' hospitals. In the afore-mentioned hospital bankruptcy of *In re Gardens*, the Attorney General imposed financial and other conditions which resulted in no party willing to buy the hospital as a going concern. *In re Gardens*, 567 B.R. at 823-24. Here, the County has publicly announced that if a stay pending appeal is granted, it will view that as excusing its obligation to close on the sale.[14] And while the Debtors would do everything possible to preserve the operations at the hospitals, closure is a possibility.

In calculating the harm that would befall the company, the debtors in *Tribune* proposed three methodologies for calculating a bond amount, all of which the Bankruptcy Court found could "serve as reasonable and justifiable basis for fixing the appropriate amount of a supersedes bond." 477 B.R. at 481. Specifically, these include a bond in the amount of: (i) a debtor's approximate equity value upon emergence; (ii) the sum of the difference between the enterprise value and the estimated liquidation value, plus estimated administrative, legal and related costs during any stay and completion of the liquidation; and (iii) the sum of various costs,

[14]https://www.sccgov.org/sites/opa/newsroom/Documents/News%20Release%20AG%20attempts%20to%20block%20hospitals%20sale%20FINAL.pdf ("A stay will cause a breach of the purchase agreement between Verity and the County, thus preventing the sale. 'Since the County was the only party to bid on Verity's hospitals in Santa Clara County, it is likely that such an action would cause the closure of O'Connor and St. Louise hospitals,' said County Executive Jeffrey V. Smith, M.D., J.D.").

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expenses and damage claims. *Id.* at 479. Ultimately, the *Tribune* court required a $1.5 billion bond, calculated pursuant to the third option, which was the smallest of the potential bond sizes, but was the "sum advanced most vigorously" by the plan proponent. *Id.* at 481. This District has recognized "the fact that a bond of 1.25 to 1.5 time the judgment is 'typically required.'" *In re GGW Brands, LLC*, No. 2:13-BK-15130-SK, 2013 WL 6906375, at *28 (Bankr. C.D. Cal. Nov. 15, 2013); *see also Cotton ex rel. McClure v. City of Eureka, Cal.*, 860 F. Supp. 2d 999, 1029 (N.D. Cal. 2012) ("Although practices vary among judges, a bond of 1.25 to 1.5 times the judgment is typically required." (quoting Christopher A. Goelz & Meredith J. Watts, California Practice Guide: Ninth Circuit Civil Appellate Practice ¶ 1:168 (TRG 2011)). Accordingly, in the event that a stay is granted, the Debtors submit that the requisite bond should be $350 million, which is consistent with that locally-recognized rate .

At a minimum, as established by *Tribune*, the amount of the requisite bond could be $235 million, which is the value of the sale which the Attorney General seeks to block. Should the stay be granted, the risks to the Debtors include lost purchase monies from the sale, additional professional fees and administrative costs, certain lost opportunity costs incurred by non-moving creditors, harm caused by delay in seeking a new buyer if one even exists (the Court should be mindful that there were no overbids filed). To fully protect the Debtors, creditors, and other stakeholders against the aforementioned harms, the Debtors, therefore, submit that if the Court were to consider granting the stay, the stay should be conditioned on a bond amount of $350 million, and in no event less than $235 million.[15]

[15] As neither "the United States, its officer, or its agency," the Attorney General is subject to the Federal Rules' bond procedures and requirements. Although Congress expressly carved out a statutory exception to the bond requirement for the federal government under Bankruptcy Rule 8007(d) and through a substantively identical provision in Federal Rule 62(e), it did not so provide any exception for non-federal governmental entities. This District and other California federal Courts

V.

CONCLUSION

For all these reasons, the Court should deny the Motion in its entirety with prejudice.

Dated: February 11, 2019

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SAMUEL R. MAIZEL
TANIA M. MOYRON

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

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have interpreted this plain language and plain omission to require non-federal governmental entities to post a bond like any other party that seeks to stay the effect of an order of a federal court. *See*, e.g., *Leuzinger v. County of Lake*, 253 F.R.D. 469, 473 (N.D. Cal. 2008) (recognizing that while the rule "waives the bond requirement for the United States, its officers, or its agencies, . . . it contains no express waiver for the states or their subdivisions" (internal citations omitted)); *In re Hassan Imports P'ship*, No. 2:13-CV-07532-CAS, 2013 WL 6384649, at *1 (C.D. Cal. Nov. 5, 2013) (requiring city to post bond). Furthermore, these courts have held such federal bond requirement to preempt any local or state law that might otherwise exempt them. *See Id.* at*1. Consequently, the Attorney General is not exempted from posting a bond, as requested by the Debtors.

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

In re: Verity Health System Of California, Inc., et al.,[1] Debtors and Debtors In Possession.	District Court Case Number: 2:19-cv-00133-DMG Bankruptcy Court Case Number: 2:18-bk-20151-ER Adversary Case Number: NA **DECLARATION OF RICHARD G. ADCOCK IN SUPPORT OF OPPOSITION TO THE APPELLANT CALIFORNIA ATTORNEY GENERAL'S MOTION FOR STAY PENDING APPEAL**
Xavier Becerra, Appellant. v. Verity Health System of California, Inc., et al., Appellee.	

[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.

I, Richard G. Adcock, hereby state and declare as follows:

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

2. I have extensive senior-level experience in the not-for-profit 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.

3. I am knowledgeable and familiar with VHS' and its affiliated debtors' (collectively, the "Debtors") day-to-day operations, business and financial affairs, and the circumstances leading to the commencement of these chapter 11 cases (the "Chapter 11 Cases"). I was closely involved with and am familiar with the negotiation and sale process for the assets related to the Debtors O'Connor Hospital ("O'Connor") and Saint Louise Regional Hospital ("Saint Louise," and together with O'Connor, the "Hospitals") between the Debtors and Santa Clara County (the "County"), which sale was approved by the Bankruptcy Court [Docket 1153] (the "Sale Order" and "Sale," respectively).

4. 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 and Cain Brothers, the Debtors' investment bankers, and the Debtors' legal and financial advisors, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and

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the healthcare industry. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

5. I make this declaration in support of *Debtors' Opposition to California Attorney General's Motion to Stay The Bankruptcy Court's Order (A) Authorizing The Sale Of Property Free And Clear Of All Liens, Claims, Encumbrances and Other Interests Pending Appeal of The Bankruptcy Court' Memorandum of Decision Overruling Objections of the California Attorney General and Sale Order.*

6. The Debtors' estates are in a precarious financial position, with substantial daily net cash losses, as set forth in more detail in my declaration filed on August 31, 2018 [Bankr. Docket No. 8]. If the Court granted a stay pending appeal, it is my opinion that the Sale will be in material danger of collapsing and not closing. A stay of the Sale Order would impede or potentially doom the Debtors' ability to achieve what they set out to do when they commenced their chapter 11 cases—to maintain patient care while enabling a safe and prompt transfer of these important Hospitals to new owners with the financial wherewithal to continue to fulfill their charitable mission, provide for the health and well-being of their patients and honor their debt obligations. It would also detrimentally impact the viability of these chapter 11 cases.

7. The Debtors have also taken numerous actions and expended significant resources in reliance on the Sale Order on both the labor and operational side. Since The Bankruptcy Court entered the Sale Order, more than 100 employees of VHS, O'Connor, Saint Louise, Berkeley Research Group ("BRG") and Dentons US LLP ("Dentons") have been working with representatives of the County on transfer of the Hospitals' operations. Numerous other third parties, perhaps with equal or a greater number of employees, were also engaged to provide support, counsel, and labor to make this transition happen. These include but are not exclusive of public relations consultants, and outside legal counsel Nelson

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Hardiman. In total, hundreds of hours already have been spent and hundreds of additional hours are being devoted to the task of transferring the Hospitals to the County.

8. Leading efforts on the ground, a joint Steering Committee meets every Monday (consisting of approximately 13 persons from VHS and a nearly equal number of persons from the County, all executive levels), a joint Group meets every Tuesday to review the status of all tasks being performed on the sale (consisting of approximately 26 people from VHS, and a nearly equal number of persons from the County), and an internal team of VHS personnel meets every Thursday on the preparation of the Transition Services Agreement ("TSA"). These Committees draft policy, strategy and "a practical road map" for the lower transitional working groups.

9. Personnel and executives alike, at VHS, O'Connor and Saint Louise have formed those transitional working groups to address specific transition issues. More specifically, since December 27, 2018, working groups have been formed and are regularly meeting with regard to IT, Revenue Cycles, Human Resources, Supply Chain Management and Finance. Starting the week of January 14, 2019, other working groups were formed to address Quality and Clinical Performance, and Capital Equipment.

10. Since December 27, 2018, the following actions have been taken:

> **The Transition Services Agreement**: Personnel from VHS, O'Connor and Saint Louise, together with personnel from BRG and Dentons, commenced preparing the extensive TSA which outlines the transition of services and responsibilities from the two Hospitals to the County. In that regard, personnel at VHS, O'Connor, Saint Louise, BRG and Dentons are: identifying vendor contracts being transferred to the County, reviewing revenue and considering staffing issues; and preparing a Business Plan for the Hospitals being transferred to the County.

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Information Technology: Major time and effort is being spent on IT, transferring the VHS Networks for O'Connor and Saint Louise into the Network at the County. In fact, VHS, O'Connor and Saint Louise have already successfully put in place a "secured network tunnel" connecting VHS's San Jose Data Center with the Santa Clara County Data Center. Steps are being taken to disconnect the VHS Network from O'Connor and Saint Louise so that the County can take over the responsibility for IT. The work is ongoing and more tasks are being scheduled on a daily basis.

Corporate Communication Affairs, and Marketing: A substantial amount of time is being spent on communications and public relations, including meetings with public relations advisors; meeting with the County on transition marketing; gathering and documenting all existing materials on O'Connor and Saint Louise; creating FAQs about the Hospitals; conducting a meeting between directors and managers of O'Connor and Saint Louise with representatives of the County on personnel issues; conducting "question and answer" sessions for the Medical Staff and County Executives; conducting meetings by and between the County and the Hospitals' Cardiovascular Services Physicians, Family Medicine Physicians and Orthopedic Physicians; creating documents pertaining to the post-sale marketing of O'Connor and Saint Louise; meeting with employees of O'Connor and/or Saint Louise on the upcoming transfer; photographing and documenting all signage with current O'Connor and Saint Louise logos; creation of New Patient Guidelines; and transferring the Website currently in place for O'Connor and Saint Louise to the County. The work is ongoing and more tasks are being scheduled on a daily basis.

Human Resources, Talent Acquisition and Employee Relations: In regard to Human Resources, VHS, O'Connor and Saint Louise personnel have commenced job fairs for retention of current employees and employment by the County of new employees.

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Accounting, Financial Management and Corporate Finance: Finance Teams, including approximately 25 individuals from both VHS and the County, with personnel from BRG and Dentons, are coordinating financial transition issues. Substantial work has been performed on Quality Assurance Fees, including gathering of data, meetings, correspondence and court filings. These included voluminous amounts of data mining, storage, forecasting and analytics in a very short span of time.

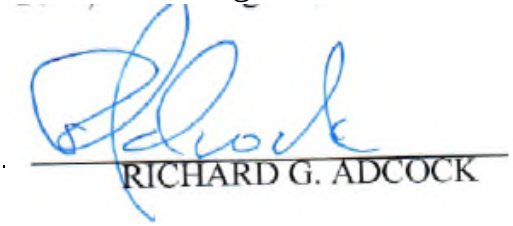
Corporate Counsel (In House), Compliance and Risk Management: Our legal counsel, both in-house and Dentons, have been preparing extensive legal documents in connection with the transition. The work encompasses diligent legal research, preparation of pleadings and massive number of telephonic/electronic and in person meetings.

Outside Corporate Counsel: In addition to Dentons, VHS retained the law firm of Nelson Hardiman who is preparing change of ownership applications for various licenses and permits, including but not limited to hospital licenses, pharmacy permits, FCC radio station authorizations, tissue bank licenses, laboratory licenses and radiology licenses. Nelson Hardiman is gathering information from various contacts at O'Connor and Saint Louise and answering questions from the County regarding licensure, permits and current operations.

11. While I do not believe the harm that I have described may be remedied solely by monetary consideration, it is my opinion that the financial risk posed by the stay sought by the Attorney General is at least $350 million.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed this 10th day of February 2019, at Los Angeles, California.



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

In re: Verity Health System Of California, Inc., et al.,[1] Debtors and Debtors In Possession.	District Court Case Number: 2:19-cv-00133-DMG Bankruptcy Court Case Number: 2:18-bk-20151-ER Adversary Case Number: NA **DECLARATION OF JOHN P. MILLS IN OPPOSITION TO THE CALIFORNIA ATTORNEY GENERAL'S MOTION FOR STAY PENDING APPEAL**
Xavier Becerra, Appellant. v. Verity Health System of California, Inc., et al., Appellee.	

[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.

DECLARATION OF JOHN P. MILLS

1. I am the Director of the Employee Services Agency ("ESA") for the County of Santa Clara ("SCC"), and my responsibilities include overseeing SCC's human resources, labor relations, employee benefits, and executive recruitment functions. My office is located at 70 West Hedding Street, San José, California, 95110. SCC is a political subdivision of the State of California.

2. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon. Except as otherwise stated, all facts contained within this declaration are based upon my personal knowledge, from information gathered from other SCC employees, and/or my review of relevant documents.

3. I submit this declaration in support of Debtors' Opposition to the California Attorney General's Motion to Stay the Court's Order Authorizing the Sale of Certain of the Debtors' Assets to the County of Santa Clara Free and Clear of Liens, Claims, Encumbrances, and Other Interests Pending Appeal of the Court's Memorandum of Decision Overruling Objections of the California Attorney General and Sale Order.

4. I directed SCC ESA staff to take numerous actions and expend significant resources in reliance on the United States Bankruptcy Court, Central District of California – Los Angeles Division's December 27, 2018 "Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Leave Related Thereto; and (C) Granting Related Relief" ("Sale Order").

5. Following entry of the Sale Order, SCC ESA staff organized and held "Information and Employment Fairs" at O'Connor Hospital and St. Louise Regional Hospital (collectively, the "Hospitals"). A true and correct copy of SCC ESA's informational flyer for the Information and Employment Fairs is attached hereto as Exhibit A. The County's Information and Employment Fairs took place from 7:00 a.m. to 4:00 p.m. on January 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18, 2019. *See* Exhibit A.

6. Following entry of the Sale Order, SCC ESA staff have worked approximately one thousand six hundred and thirty-eight (1,638) hours to staff the Information and Employment Fairs at the Hospitals. At these Information and Employment Fairs, SCC ESA staff; helped employees

complete SCC employment applications on SCC-supplied laptops; answered questions from potential applicants currently employed at the Hospitals; and distributed informational documents explaining the steps in SCC's provisional hiring process, summarizing SCC health and welfare benefits, and containing a matrix of SCC's available medical plans. True and Correct copies of these documents are attached hereto as Exhibits B, C, and D, respectively.

7. Following entry of the Sale Order, SCC ESA provided twenty (20) laptops that employees of the Hospitals could use to complete SCC employment applications at the Information and Employment Fairs.

8. Following entry of the Sale Order, SCC has received from employees of the Hospitals two thousand and sixty-four (2,064) applications for SCC employment, which would be effective as of the closing of the transaction. SCC ESA staff have worked one thousand eight hundred and ten (1,810) total hours reviewing and processing these applications.

9. Following entry of the Sale Order, SCC ESA staff have participated in numerous meetings about SCC's acquisition of the Hospitals, including internal meetings with SCC employees, meetings with consultants, and meetings with employees of the Hospitals and Verity Health System of California, Inc. These meetings have involved approximately four hundred and seventy-five (475) total hours worked by SCC ESA staff to date.

10. Following entry of the Sale Order, SCC ESA staff have participated in numerous meetings with labor organizations about SCC's acquisition of the Hospitals. These meetings have involved approximately one hundred (100) total hours worked by SCC ESA staff to date.

11. Following entry of the Sale Order, SCC ESA staff have created one thousand four hundred and sixty-one positions in SCC's PeopleSoft database, which will enable the County to electronically process hiring and payroll, which has involved approximately thirty-six (36) total hours worked by SCC ESA staff to date.

12. The actions taken and resources expended following entry of the Sale Order, as described in paragraphs 4-11, have a value of approximately $263,365.

13. At my direction and in reliance on the Sale Order, SCC ESA has established the following timelines for the recruitment and hiring of employees at the Hospitals:

a. January 2, 2019: Sent to employees of the Hospitals Information and Employment Fair flyers and information about SCC employment;

b. January 3-18, 2019: Conduct Information and Employment Fairs at the Hospitals;

c. January 10-15, 2019: Standardized the comparison of positions at the Hospitals with positions at SCC;

d. January 13-16, 2019: Prepared and revised the ordinance adding SCC positions into which SCC could hire successful applicants who were employees at the Hospitals;

e. January 21, 2019: Deadline for employees of the Hospitals to submit employment applications;

f. January 3, 2019 – February 1, 2019: SCC ESA will review applications and apply the hiring criteria from the APA, including determining the appropriate SCC job classification and pay rate for each applicant;

g. January 18, 2019 – February 7, 2019: SCC ESA will send letters offering employment to successful applicants;

h. January 28, 2019 – February 4, 2019: SCC ESA will create the added SCC positions in the appropriate budgetary cost centers in SCC's human resources information system to support the hiring of new employees;

i. February 11, 2019: Deadline for successful applicants to accept their offers of employment;

j. February 7, 2019 – February 22, 2019: SCC ESA staff are currently planning and intend to conduct Onboarding/Enrollment Fairs at which SCC ESA staff would assist successful applicants currently employed at the Hospitals to complete new hire paperwork, which includes Form W-4s, Form I-9s, benefits enrollment documents, emergency contact information, and other paperwork required to onboard a new employee;

k. February 7, 2019 – approximately February 28, 2019: Concurrently with the Onboarding/Enrollment Fairs described in subsection j, above, SCC ESA staff

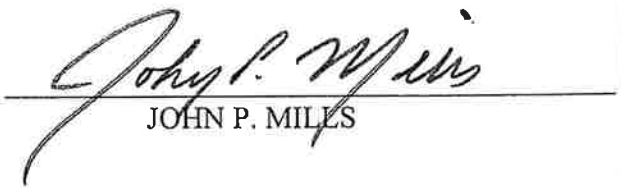
are planning to perform the internal processes necessary to complete the hiring process by February 28, 2019 for successful applicants currently employed at the Hospitals who accept SCC offers of employment. Onboarding includes preparing electronic personnel records, obtaining background checks and medical clearances, processing new hire paperwork and entering new hires into SCC's human resources information system, creating identification badges, and assigning schedules; and

l. Approximately March 1, 2019: First day of employment with SCC for successful applicants formerly employed by the Hospitals.

14. Based on data provided to SCC by the Hospitals and Verity Health System of California, Inc., one hundred and four (104) employees who were employed at the Hospitals on September 4, 2018 have left employment at the Hospitals as of December 28, 2018. Based on this attrition and my experience as SCC's ESA Director, I am gravely concerned that a stay of the Sale order and the resulting delay to the timelines in paragraph 12 will cause serious uncertainty among the remaining employees of the Hospitals about the likelihood of SCC acquiring the Hospitals. Such uncertainty will likely result in knowledgeable and experienced employees at the Hospitals continuing to leave at an accelerated rate. This likely loss of knowledgeable and experienced employees has the potential to significantly harm SCC's ability to operate the Hospitals following acquisition.

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

Executed this 8th day of February, 2019 in Napa, California.



JOHN P. MILLS

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

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

In re: Verity Health System Of California, Inc., et al.,[1] Debtors and Debtors In Possession.	District Court Case Number: 2:19-cv-00133-DMG Bankruptcy Court Case Number: 2:18-bk-20151-ER Adversary Case Number: NA **DECLARATION OF JAMES R. WILLIAMS IN OPPOSITION TO THE CALIFORNIA ATTORNEY GENERAL'S MOTION FOR STAY PENDING APPEAL**
Xavier Becerra, Appellant. v. Verity Health System of California, Inc., et al., Appellee.	

[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.

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DECLARATION OF JAMES R. WILLIAMS

1. I, James R. Williams, declare as follows:

2. I have personal knowledge of the following facts, and if called to testify as to those facts, could and would do so competently.

3. I currently serve as the County Counsel for the County of Santa Clara and am an attorney at law licensed to practice in the State of California.

4. On January 14, 2019, I authored and signed a letter of that same date addressed to the California Attorney General. I caused this January 14, 2019 letter to be sent to the California Attorney General's Chief Deputy, Sean McCluskie, and to Special Assistant Attorney General Melanie Fontes-Rainer on January 14, 2019. A true and correct copy of my January 14, 2019 letter to the California Attorney General is attached to this declaration as Exhibit A.

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

Executed this 8th day of February, 2019 in San José, California.

JAMES R. WILLIAMS

EXHIBIT A

County of Santa Clara
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James R. Williams
County Counsel

January 14, 2019

Hon. Xavier Becerra
Attorney General of California
1300 I Street
Sacramento, CA 95814-2919

Re: County of Santa Clara's Acquisition of O'Connor and St. Louise Hospitals

Dear Attorney General Becerra:

Our Offices share a deep and mutual commitment to public service, acting on behalf and for the benefit of the residents we serve. It is in this spirit that I write you, in an effort to identify a solution to the unfortunate, timeline-driven position that we are both in today. Through this letter, I hope to briefly share the County's perspective on the challenges we each face at this juncture, and to propose a path forward that I hope will address your Office's concerns and the County's.

As you know, counties in California are charged with provision of all core safety net services to their neediest residents, and some operate county hospitals in order to ensure the provision of healthcare services to those and other members of their communities. The County of Santa Clara currently operates one of the largest public safety net hospitals in California—Santa Clara Valley Medical Center—which provides comprehensive, high-quality care to hundreds of thousands of indigent and low-income county residents each year. When Verity Heath System's bankruptcy gave rise to the prospect that two hospitals—and the only hospital in the southern part of the county—would close, leaving thousands of residents without access to care, the County stepped forward to purchase those facilities in order to continue and enhance access to healthcare for our neediest residents.

Three years earlier, the Attorney General's Office had taken steps to ensure access to services through these same hospitals, imposing a series of conditions designed to protect access to care when Verity—the corporate entity currently in bankruptcy—bought these hospitals from a non-profit organization in the hopes of turning them into a profitable corporate asset. The County supported and assisted your Office in its effort to impose conditions on the sale at that time. We share your Office's view that the Attorney General has clear authority under the Corporations Code to impose these sorts of conditions on the sale of charity hospitals to private corporations such as Verity, and that this authority provides important protections to the public.

However, after notifying your Office of the County's intent to purchase these hospitals, the County has been consistently forthright that it cannot do so if all of the conditions imposed on Verity are imposed on the County. As you recognized in your November 9, 2018 clarification letter to the County, many of the conditions imposed on Verity conflict with other legal obligations imposed on counties as subdivisions of the State that exists for the purpose of providing safety net services and regional governance. And many are also irreconcilable with operation of a viable public (as opposed to private) hospital system.

I do not believe the Attorney General's Office ultimately wants to block the sale of the hospitals to the County. However, your Office's request for a stay of the Bankruptcy Court's sale order imperils our acquisition of O'Connor and St. Louise Hospitals, which may well result in their closure, leaving thousands of Santa Clara County residents without timely and critical access to hospital services. Therefore, I suggest as a path forward that our Offices work collaboratively to craft a memorandum of understanding that would memorialize the fact that the County will ensure broad access to clinical services at the two hospitals. On December 19, 2018, I had a brief call with Sean McCluskie where I confirmed my Office's willingness to work with your Office to craft an enforceable memorandum of understanding to document the County's commitment to deliver health care services in a manner that is consistent with the objectives of the conditions and the state laws that govern how counties operate. I also affirmed the County's willingness to do so even after the Bankruptcy Court issued a sale order.

The County remains willing to document its commitment to maintaining the clinical services it will provide the most vulnerable members of our community—services that for decades the County has provided through the Santa Clara Valley Medical Center and its health and hospital system—if the County's purchase of the hospitals is able to proceed with your support.

Time is obviously of the essence to resolve this issue. We hope to discuss and finalize a path forward with you or your staff and hope to have the opportunity to do so as soon as possible, ideally early this week before the next court filing on Friday, January 18th. We specifically request to meet on the afternoon of Tuesday, January 15th. To that end, we will separately provide your Office with a draft memorandum of understanding later today. And we hope that a quick resolution would allow us to jointly communicate, to the Court and to the general public, to put the community's concerns regarding the transaction to rest. The County remains committed to working creatively with you to find solutions that will turn this situation into a win-win for the benefit of our residents and their long-term wellbeing.

Very truly yours,

JAMES R. WILLIAMS
County Counsel

c: Sean McCluskie, Chief Deputy Attorney General
Melanie Fontes-Rainer, Special Assistant Attorney General

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

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DECLARATION OF PAUL E. LORENZ

I, PAUL E. LORENZ, declare:

1. I am a resident of the State of California. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I am the Chief Executive Officer of Santa Clara Valley Medical Center ("SCVMC"), which is owned and operated by the County of Santa Clara ("the County"). I have held this position since November 2012. Prior to my current role at SCVMC, I served as the Chief Deputy Director of the Ventura County Health Care Agency for the County of Ventura. I have served in public health care for over 27 years.

3. SCVMC was founded in 1876 and is a fully integrated and comprehensive public health care delivery system. It provides critical healthcare to residents of the County regardless of their ability to pay. It is the only public safety net healthcare provider in Santa Clara County, and the second largest such provider in the State of California. Generally, safety net providers like SCVMC have a primary mission to care for the indigent population and individuals who are uninsured or underinsured, or covered by Medicaid, which is the federal healthcare insurance program for low income individuals.

4. SCVMC operates a tertiary level acute care hospital with 731 licensed beds, eleven ambulatory care clinics, and four medical and dental units, along with specialized centers that provide trauma, burn, rehabilitation, renal, and ambulatory and psychiatric care. It has over 6,000 employees, including 350 physicians who train 170 residents and fellows per year as a graduate medical education provider and teaching institution. SCVMC is a Level 1 Adult Trauma Center and Level 2 Pediatric Trauma Center. Its burn and rehabilitation centers have been nationally recognized, and its ambulatory specialty center, renal care center, and acute inpatient psychiatric units are state of the art. SCVMC provides a full range of health services, including emergency and urgent care, ambulatory care, behavioral health, comprehensive adult and pediatric specialty services, the highest-level neonatal intensive pediatric care unit, women's health, comprehensive

hematology/oncology services, and other critical health care services. The County is purchasing O'Connor Hospital (OCH) and Saint Louise Regional Hospital (SLRH) to add these hospitals to its health system along with SCVMC to ensure that all residents of Santa Clara County will continue to have access to high-quality local health services, regardless of their ability to pay. It is critical for these hospitals to remain open and operating to ensure access to care. A map of the region's hospitals, to illustrate geographically the impact a closure of these hospitals, particularly SLRH, would have on residents of Santa Clara County and neighboring counties, is attached as an Exhibit to this declaration.

5. As Chief Executive Officer of SCVMC, I have been heavily involved in the work needed to transition ownership of OCH and SLRH to the County. These efforts include onboarding more than 1,400 OCH and SLRH employees (for employment effective as of the closing of the transaction), credentialing and onboarding more than 800 physicians, and taking appropriate actions to ensure that the necessary equipment, supplies, services and staff are in place so there is no disruption to patient care at these facilities. In connection with such work, I directed SCVMC staff to take numerous actions and expend significant resources in reliance on the United States Bankruptcy Court, Central District of California – Los Angeles Division's December 27, 2018 "Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Leave Related Thereto; and (C) Granting Related Relief" ("Sale Order"). Some of these efforts are described below.

6. Over the past few weeks, in reliance on the Sale Order, I, along with the SCVMC Chief Medical Officer, and other SCVMC medical executive leaders, have attended at least 30 meetings with various physician leaders at OCH and SLRH to discuss the County's intent to continue or expand services at OCH and SLRH, including assuming and augmenting physician contracts; adding call coverage; providing for additional administrative and professional services; increasing coverage for uninsured and underinsured patients; and providing training and support for the County's implementation of an electronic health record at the facilities. These meetings

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included physician leadership for the service lines of 24-hour emergency and trauma service; intensive care and neonatal intensive care; cardiovascular and coronary care; thoracic surgery; cancer care; radiation oncology; gastroenterology; obstetrics, pediatrics; orthopedics; bariatric care; urology; general medicine; neurosurgery; diagnostic imaging and radiology; pathology services; surgical services; anesthesia; and clinical services. There are also additional meetings scheduled with family medicine, anesthesia, pediatrics and internal medicine physicians in the upcoming weeks prior to closing.

7. In addition, following the Sale Order, SCVMC has held, and continues to hold, numerous workgroups and individual meetings both internally, and with OCH and SLRH staff, to plan for the transition of ownership. These workgroups include, but are not limited to, facilities, clinical operations, transition steering committee, physician and managed care contracting, finance, manager forums, IT planning, capital equipment, supply chain, transition services, ancillary and support, human resources, physician strategy, medical staff, physician services, bed capacity, transition metrics, marketing and communications. The actions taken, and resources expended by County personnel to attend these planning meetings as of the Sale Order, and through February 1, 2019, total at least 1,439 staff hours, for an approximate cost of $222,154.00.

8. The County has applied to the California Department of Public Health (CDPH) to operate OCH and SLRH on a consolidated license with SCVMC. In reliance on the Sale Order, the County paid approximately $252,460.00 in fees to CDPH to process the license applications. The County is working with CDPH to schedule site surveys at the facilities in mid-February.

9. Pursuant to state and federal law, a physician must be credentialed and privileged as a member of a hospital's medical staff before that physician can admit and treat patients at that hospital. The credentialing and privileging process is time and labor intensive and requires a thorough review and verification of a physician's qualifications, education, training, experience, and licensure to provide the requested services. There are approximately 627 physicians on the OCH medical staff and approximately 218 physicians on the SLRH medical staff. As a requirement to operate a consolidated license, SCVMC must have a single consolidated medical

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staff approved by the County Board of Supervisors (SCVMC's Governing Body), which means that all of the physicians currently on the medical staffs of OCH and SLRH must be credentialed and privileged by the SCVMC medical staff. In reliance on the Sale Order, SCVMC prepared and issued an application form and communication to all OCH and SLRH physicians advising them of the need to apply to SCVMC medical staff in order to continue treating their patients at the hospitals once there is a transfer of ownership to the County. To date, more than 95 percent of the physicians have submitted their applications to become members of the SCVMC medical staff. Over the next few weeks, SCVMC will expend significant staff and financial resources to review and process these applications and onboard the physicians to the SCVMC medical staff, including a review of their credentials, education, licensing and other matters, and submission to the County Board of Supervisors (SCVMC's Governing Body) for approval. All of these actions must be completed no later than February 28, 2019, the date that, under the terms of the APA, the closing of the transaction must occur. If the Court were to issue a stay, SCVMC would cease to process these hundreds of applications and onboard physicians in order for the County to operate the hospitals. A failure by SCVMC to process these applications and credential the physicians in a timely manner will result in the physicians being unable to admit and care for their patients at OCH and SLRH, which will significantly harm the County's ability to operate these hospitals following acquisition.

10. In addition, the County hired a consulting firm, Alvarez & Marsal, to manage the project and transition at the rate of $565.00 per hour. Following entry of the Sale Order, Alvarez & Marsal has expended more than 450 hours in support of these meetings and the transition efforts, for a total cost to the County of at least $254,250.00.

11. SCVMC has also expended, and continues to expend, significant resources following the Sale Order to negotiate contracts for equipment, supplies, and services. For example, in reliance on the Sale Order, the County paid more than $114,000 as a non-refundable payment to a vendor in order to secure a contract for a necessary supply chain materials management system to be in place for the County to operate at OCH and SLRH upon closing.

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County staff continue to engage in regular discussions with potential vendors. If the Court were to issue a stay, it would significantly impede the ability of the County to negotiate with vendors and procure contracts for services and supplies by February 28, 2019, which will significantly harm the County's ability to operate these hospitals following acquisition.

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

Executed this 7th day of February 2019 in San José, California.

PAUL E. LORENZ

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

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DECLARATION OF SARA CODY, M.D.

1. I, Sara H. Cody, declare as follows:

2. I am the Public Health Officer for the County of Santa Clara ("County"). My office is located at 976 Lenzen Avenue, San José, California.

3. I have personal knowledge of the following facts, and if called to testify, could and would so competently testify as to those facts.

4. I am the Director of the County's Public Health Department, as well as the Health Officer for the County and each of the 15 cities located within Santa Clara County. I received my Medical Degree from Yale University School of Medicine and completed my residency in internal medicine at Stanford University Hospital. Following residency, I served as an Epidemic Intelligence Service Officer for the Centers for Disease Control and Prevention before beginning my work for the County of Santa Clara's Public Health Department in 1998.

5. I have held the Health Officer position from 2013 to the present, and I have held the Public Health Department Director position from 2015 to the present. In these roles, I am responsible for promoting and protecting the health of all of Santa Clara County's 1.9 million residents. In that capacity, I oversee approximately 450 Public Health Department employees who provide a wide array of services to safeguard and promote the health of the community.

6. Prior to becoming the Health Officer for the County and each of its cities, I was employed for 15 years as a Deputy Health Officer/Communicable Disease Controller at the County's Public Health Department, where I oversaw surveillance and investigation of individual cases of communicable diseases, investigated disease outbreaks, participated in planning for and response to numerous public health emergencies.

7. The southern portion of Santa Clara County, where Saint Louise Regional Hospital ("Saint Louise") is the only hospital, is disproportionately low income, uninsured, and under insured when compared to the rest of our County. If Saint Louise were to close, residents of southern Santa Clara County would be forced to travel long distances to access basic hospital services, and as a result, their health would be at significant risk. If adults and children with

urgent medical needs from those communities were required to travel north to the City of San José or south to the City of Salinas to obtain the care they currently receive at Saint Louise, their lives could be endangered and their health could be at risk.

8. The serious impacts of the closure of Saint Louse would not be limited to Santa Clara County. San Benito County is a small rural county immediately south of Santa Clara County. A large portion of its population is low income, and uninsured or under insured.

9. Hazel Hawkins Memorial Hospital, the only hospital in San Benito County, has very limited services, and I understand that hospital is currently experiencing significant financial hardship and instability.

10. San Benito County residents, in addition to the residents of Southern Santa Clara County, are heavily dependent on Saint Louise for access to critical health services, as Saint Louise offers far more extensive care than is available at Hazel Hawkins Memorial Hospital and is near the population centers in San Benito County. If San Benito County residents with urgent medical needs were required to travel north to the City of San José or south to the City of Salinas to obtain the care they currently receive at Saint Louise, their lives could likewise be endangered and their health could be at risk.

11. The populations of southern Santa Clara County and San Benito County are predominantly Latino, and also experience higher rates of serious health problems than the County population at large. The Cities of Gilroy and Morgan Hill have higher mortality rates due to cancer, heart disease, stroke, Alzheimer's, chronic lower respiratory disease and diabetes than the County's overall population.

12. Latino residents of both counties already experience significant healthcare access disparities as compared to white residents. Twenty percent of Latino residents of Santa Clara County report that they could not see a doctor in the past twelve months due to cost, compared to eleven percent of the County population overall. Closure of Saint Louise hospital would

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significantly exacerbate these disparities by disproportionately denying the residents of these communities with access to proximate hospital care.

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

Executed this 4th day of February, 2019 in San José, California.

SARA H. CODY, M.D.

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UNITED STATES DISTRICT COURT
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SUPPLEMENTAL DECLARATION OF JEFFREY SMITH, M.D., J.D.

I, Jeffrey Smith, declare as follows:

1. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon. Except as otherwise stated, all facts contained within this Supplemental Declaration are based upon my personal knowledge, from information gathered from other County employees, and/or my review of relevant documents.

2. I am the County Executive for the County of Santa Clara ("County"). My office is located at 70 West Hedding Street, San José, California, 95110. The County is a political subdivision of the State of California.

3. I received an M.D. from the University of Southern California, School of Medicine. After medical school, I completed a Family Medicine Residency and then began to practice medicine. I then went on to become the Chief Medical Officer and Family Practice Residency Director for the Contra Costa County Health Services. I also received a Juris Doctor degree from the University of California Berkeley and am an inactive member of the California State Bar. Additionally, I have served as a Member of the Contra Costa County Board Supervisors and a Councilmember for the City of Martinez. In my current position as County Executive for the County of Santa Clara, under the County Charter, I am the chief administrative officer of the County, and I am responsible to the County's Board of Supervisors for the proper administration of all affairs of the County. Among other duties, I oversee most County departments, including the County's health and hospital system, and I have budgetary oversight for the entire County organization.

4. I submit this Supplemental Declaration in opposition to the California Attorney General's Emergency Stay Motion.

5. I have overseen the County's efforts to acquire the Debtors' two hospitals in Santa Clara County (Saint Louise Regional Hospital and O'Connor Medical Center, "Saint Louise" and "O'Connor," respectively) and related assets (collectively, the "Assets"), including the negotiation and execution of the Asset Purchase Agreement (the "APA"), that is dated October 1, 2018. As

set forth in the APA, the County, in consideration for the sale of the Assets, agreed to pay an aggregate purchase price of $235 million, as otherwise adjusted pursuant to the terms of the APA.

The County's Historical Concern with the Continued Viability of O'Connor and Saint Louise

6. I, along with many members of the County's health care community, have long worried about the tremendously adverse impact that a failure and closure of the O'Connor and Saint Louise hospitals would have on community health care access in the County, particularly south County, as well the additional fiscal and system pressures that such closures would have on our public health and hospital system in the County.

7. It was for these reasons that back in 2015 I strongly supported, and even advocated to the Attorney General's Office at that time, that Attorney General Kamala Harris should exercise her authority under California's charitable trusts statutes to impose reasonable conditions on a private purchaser of the former Daughters of Charity health system, with the goal to support continued health care access for our community and to ensure that the fiscal health of our County public hospital system would not be compromised. It appears that Attorney General Harris agreed with my suggestions back in 2015, and as a result, added conditions to the transaction in 2015 (the "2015 Conditions") that would better ensure that health care access would be maintained in the County after the Daughters of Charity changed ownership of O'Connor and Saint Louise to Verity Health System ("Verity"), a private entity that was financially connected to an out-of-state hedge fund.

The Attorney General Erroneously Asserts That the County has Refused to Commit to Provide Essential Healthcare Services; Just the Opposite is True.

8. In the Attorney General's Emergency Stay Motion (in particular, at page 9 of 29), the Attorney General asserts that he needs an emergency stay because of the County's alleged "refusal to commit to [provide] these essential healthcare services" after the sale of O'Connor and Saint Louise to the County. That assertion, regarding the County's alleged "refusal to commit," is demonstrably incorrect. Indeed, in the past four months, I have met with the Attorney General of

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California Xavier Becerra personally on one occasion, and I met on a separate occasion with the Attorney General's Chief Deputy, Sean McCluskie, in an attempt to secure the Attorney General's support of the sale of O'Connor and Saint Louise to the County and to assuage any concern they may have about the County's commitment to providing comprehensive, high-quality health care to all of our County residents, regardless of their income, insurance, or their ability to pay.

9. The County's longstanding commitment to providing comprehensive and essential health care services, including 24-hour emergency and trauma services; intensive care and neonatal intensive care; coronary care and stroke care; cancer treatment; obstetric, reproductive, and other women's health care services; pediatric care; subacute care; diagnostic imaging services; and surgical services; all in a welcoming, non-discriminatory environment, is, and has been, a core principle in the County's mission, as a matter of vision and as a matter of state law (for example, under California Welfare & Institutions Code section 17000).

10. After Verity filed for bankruptcy in the Summer of 2018, I attended a meeting directly with Attorney General Xavier Becerra, along with a few members of the labor leadership community; this meeting occurred in September of 2018. At this meeting, I expressed my hope to Attorney General Becerra that he would strongly support the sale of the O'Connor and Saint Louise hospitals to the County. During that conversation, I affirmed to Attorney General Becerra that, if the County were the successful bidder for the O'Connor and Saint Louise hospitals, the County would be committed to maintain the same, or even enhanced, levels of health care services as those set forth in some of the Attorney General's clinical service-related conditions that his predecessor imposed on Verity in 2015. I made these assurances because providing such clinical services is not only a core mission of our current County health and hospital system and compelled by state law (in the Welfare & Institutions Code), but the maintenance of such clinical services, and providing enhanced access to health care services throughout the County to all residents, regardless of their ability to pay, has been, and remains, the primary motivating factor underlying the County's interest in purchasing O'Connor and Saint Louise hospitals.

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11. Since my September 2018 meeting with Attorney General Becerra, I have reviewed several pieces of correspondence between the Santa Clara County Counsel's Office and the Attorney General's Office, where the County has again confirmed its commitment to providing the same or enhanced levels of clinical services as those set forth in the 2015 Conditions. That legal correspondence made the additional point that, County mission and vision aside, the County's obligation to provide comprehensive clinical services at County hospitals was compelled by way of California Welfare & Institutions Code section 17000, among a number of other state laws and requirements. Those state laws do not include the California Corporations Code.

12. Then, on January 15, 2018, I, along with the County Counsel and several other members of the County Counsel's leadership team, travelled to the Attorney General's Sacramento headquarters to meet with the Attorney General's senior leadership team, in-person, to discuss the County's written proposal that we delivered to the Attorney General the previous day in an attempt to resolve this dispute. In particular, to address the Attorney General's concern about "enforceability" of the County's commitment to provide essential health services at O'Connor and Saint Louise after the sale, the County drafted a document that would re-affirm such a commitment, and re-affirmed the County's obligations under relevant state law, and did so in a document that would be: (1) a legally enforceable and binding contract; and (2) consistent with the state laws and regulations that actually apply to the County.

13. However, despite our lengthy travel in inclement weather to the Attorney General's Sacramento headquarters on January 15, 2018, for a discussion about the County's proposal, the meeting with the Attorney General's senior leadership lasted for approximately five minutes. The Attorney General's representatives summarily refused to enter into such a legally enforceable arrangement with the County. It is therefore incorrect for the Attorney General to assert in his Emergency Motion that the County has refused to commit to providing essential healthcare services at O'Connor and Saint Louise after the sale, and it is also incorrect that imposition of the 2015 Conditions – drafted for a private out-of-state hedge fund – is the only means to ensure a County commitment.

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Issuance of a Stay Would Effectively Terminate the County's Transaction to Buy the Hospitals

14. It was, and remains, the intent of the County, as stated in the APA, including Section 1.8 of the APA (which defines the "Assets" that are subject to the transaction contemplated by the APA, the "Transaction") that in purchasing the Assets, the County would be acquiring not only the real estate and physical buildings of the hospitals, but just as importantly, *the actual functioning businesses of the hospitals*. The County's purchase price of $235 million specifically reflected that the Transaction included the sale of functioning hospital businesses to the County, businesses that would be staffed by and large by former Verity employees of O'Connor and Saint Louise hospitals.

15. Since the entry of the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief*, dated December 27, 2018 (the "Sale Order"), and in reliance on that Sale Order, the County has undertaken substantial efforts to transition the Assets to the County ownership, and to employ the O'Connor and Saint Louise employees who apply for County employment and are in good standing, to employ or contract with physicians to staff and support the hospitals, and to ensure appropriate equipment is available, all by February 28, 2019, the date by which the Transaction is required to close under the terms of the APA. A number of those efforts are described in the accompanying declarations of County executives, Paul Lorenz and John Mills.

16. If this Court were to issue an order granting the California Attorney General's Emergency Stay Request, the stay would effectively terminate the Transaction. If a stay were issued, the County would face tremendous uncertainty about whether it will be able to purchase the hospitals while they are still operational. As a result, the County would be forced to discontinue certain very costly and labor-intensive transition efforts for a timely and effective

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takeover of the operation of the hospitals, to mitigate the significant fiscal and practical risks of continuing these efforts when the Transaction may subsequently be blocked.

17. First, the County is currently engaged in a major, costly, and very labor-intensive effort to successfully onboard as County employees over 1,400 of O'Connor and Saint Louise current hospital staff as well as credential and on-board approximately 800 physicians, all prior to the closing o the Transaction. If a stay were issued, these activities would fully or partially be suspended, as the County cannot proceed to offer employment to these employees, and on-board these physicians, incurring costs and creating expectations regarding future employment, if the County's acquisition of the hospitals may ultimately be prevented. And even if the sale were ultimately allowed to go forward following a stay, the fact that the stay slows down or partially suspends these activities for even a brief period would make it virtually impossible for the County to onboard these approximately 2,000 physician and hospital staff by February 28, 2019, the date that, under the terms of our APA, the sale transaction must close and the date on which the County must be poised to take over operation of the hospitals.

18. Second, a stay would render the sale order not in effect, and during such a stay, the Transaction therefore could not close. If closing does not occur by February 28, 2019, the APA is terminable thereafter by either the County of Verity. Thus, both pragmatically and expressly by the terms of the APA, a stay would effectively terminate the County's Transaction to purchase the Assets.

Issuance of a Stay Would Also Undermine the Benefit of the Bargain to the County, and to the Broader Public the County Serves

19. A stay would also effectively terminate the County's Transaction to buy the Assets because the uncertainty and delay regarding the County's acquisition of the hospitals would likely result in many current hospital staff leaving their jobs and seeking employment elsewhere. If that were to occur, the Transaction would no longer deliver functioning hospitals to the County, for which the County is paying a premium far beyond what it would have paid for nonoperating hospital facilities. Indeed, according to my staff's analysis that is described in John Mills's

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accompanying declaration, already there have been a number of staff departures from the hospitals over the last several months, likely due to the existing level of uncertainty. More delay means more uncertainty and more employee departures, and further dissipation of the functional operation of the hospitals. It also means that the value of the hospitals – as functioning businesses – substantially diminishes. Thus, if a stay issues, the County would be deprived of the benefit of its bargain, as the County was only willing to pay $235 million for functionally operating hospitals, not just for the real estate and physical structures.

A Stay of the Sale Order Would Ultimately Mean a Loss of Health Care Access

20. As noted, if a stay issues, the County would be forced to slow or terminate costly efforts to prepare to take over operation of the hospitals and more hospital employees would accept employment elsewhere, causing the Transaction to terminate, and in all likelihood, cause the hospitals to close. If O'Connor and Saint Louise hospitals close, *communities in the County would lose significant access to critical health care*. This loss would be particularly devastating to residents of southern Santa Clara County, as Saint Louise Hospital is the only hospital in the region. Indeed, based on my years of experience as a practicing physician in public hospital systems in California, it is no exaggeration to say that the closure of the O'Connor and Saint Louise hospitals will very likely mean that some people will suffer needless delay in obtaining critical healthcare and that such delays may imperil lives.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8th day of February, 2019 in San José, California.

JEFFREY SMITH, M.D., J.D.

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