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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

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

Debtors and Debtors In Possession.

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

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

XAVIER BECERRA

APPELLANT(S)

v.

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

APPELLEE(S).

ADVERSARY CASE NUMBER:
N/A

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OPPOSITION TO CALIFORNIA ATTORNEY GENERAL'S EMERGENCY MOTION FOR STAY PENDING APPEAL OF THE BANKRUPTCY COURT'S ORDER AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS TO SANTA CLARA COUNTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS [DOCKET NO. 6]

Hearing:
Date: February 22, 2019
Time: 9:30 am
LOCATION: COURTROOM 8C,
350 W. 1ST ST., LOS ANGELES, CA
90012

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The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee") appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (the "Debtors"), hereby files this opposition (the "Opposition") to the *California Attorney General's Emergency Motion for Stay Pending Appeal of the Bankruptcy Court's Order Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests* (the "AG Stay Motion" [AG App. Tab 17]),[1] and in support thereof represents as follows:

PRELIMINARY STATEMENT

1. The California Attorney General (the "Attorney General") should not be permitted to stand in the way of consummation of the sale of St. Louise Medical Center and O'Connor Medical Center (the "Santa Clara Sale")—public health facilities actively treating thousands of patients without ready access to alternative healthcare—to Santa Clara County ("Santa Clara").[2] The chapter 11 cases pending before the Bankruptcy Court (the "Chapter 11 Cases") were filed because the Debtors are not financially capable of continuing to fund the losses generated by the operations

[1] "AG App." refers to the *Appendix in Support of California Attorney General's Emergency Motion for Stay Pending Appeal of the Bankruptcy Court's Order Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests* [District Court Docket No. 6]; "Debtor App." refers to *Appellee Verity Health System Of California, Inc., et al.'s Appendix in Support of Opposition to the Appellant California Attorney General's Motion*, which is to be filed by the Debtors in conjunction with the Debtors' Opposition, as defined below.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the AG Stay Motion or the Motion for Sale (as defined in the AG Stay Motion).

of the Hospitals. If the Santa Clara Sale is not consummated in a timely manner, the likely outcome will be that the Hospitals will be shut down and the Debtors' estates liquidated. Such an outcome would not be in anyone's best interest—not the Debtors, not the creditors, and not the larger Santa Clara community, including, among others, its many patients, physicians, nurses and other employees.

2. With these considerations in mind, the AG Stay Motion should be denied for two overarching reasons. *First*, the Attorney General has failed to establish that the Bankruptcy Court abused its discretion in denying the Attorney General a stay pending appeal. Where a bankruptcy court has denied a motion for stay pending appeal, review by the district court of the bankruptcy judge's decision is limited to determining whether the bankruptcy court abused its discretion. *In re Wymer*, 5 B.R. at 807 (9th Cir. B.A.P. 1980). Here, the Bankruptcy Court held hearings, allowed the parties to brief the issues, reviewed all of the facts and arguments (including an abundance of *unrefuted* evidence submitted by the Debtors) presented by the parties, and provided substantive, logical reasons for the decision it made in a written decision, including, among other grounds, the preservation of a full range of healthcare options for the residents of Santa Clara County (the "Stay Ruling" [AG App., Tab 14, at 5-10]). The Bankruptcy Court cannot be held to have abused its discretion, and, thus, the AG Stay Motion should be denied.

3. *Second,* to the extent this Court nonetheless reaches the merits of the AG Stay Motion, the Court should deny the relief requested because the Attorney

General cannot establish satisfaction of any of the requisite factors required for issuance of a stay pending appeal. The Attorney General, as set forth herein and in the Debtors' Opposition,[3] has no meritorious basis for seeking reversal of the Court's December 26, 2018 Order approving the Santa Clara Sale (the "Sale Order" [AG App. Tab 15]). Nor can he show (based upon the abundant *unrefuted* evidence submitted by both the Debtors) that any harm to him as a result of denial of a stay pending appeal would outweigh the harm to the Debtors and their stakeholders of a delay in closing the Santa Clara Sale. Instead, granting the requested stay could result in complete frustration of the Santa Clara Sale and forfeiture of all the benefits it would confer on the Debtors, the Debtors' creditors, and the larger Santa Clara community—all in the service of an appeal (the "AG Appeal") with little likelihood of success and few adverse consequences if rendered moot by consummation of the Santa Clara Sale.[4]

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[3] *Debtors' Opposition to California Attorney General's Motion to Stay the Court's Order Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests*, which is to be filed at the same time as the Committee Opposition (the "Debtors' Opposition").

[4] As set forth in the Statement of Appellee, Official Committee of Unsecured Creditors of Verity Health System of California, Inc. Regarding (I) Designation as a Proper Appellee Before this Court and (II) Intent to Oppose the California Attorney General's Motion for Stay Pending Appeal [District Court Docket No. 13], the Committee is properly an appellee with respect to AG Appeal. The Committee submitted opposition papers and participated at argument as to the Stay Ruling. It did so in compliance with the duties imposed on it by 11 U.S.C. § 1103 and the exercise of the broad "party-in-interest" rights conferred on it by 11 U.S.C. § 1109(b), in reliance on which official committees have generally been granted standing to participate in appeals from bankruptcy court orders. *See Southern Pacific Transp. Co. v. Voluntary Purchasing Groups, Inc.*, 227 B.R. 788 (E.D. Tex. 1998) ("person aggrieved" principles and statutory right granted to official committee under 11 U.S.C. 1109(b) to appear and be heard on any issue in bankruptcy case extended to both trial and appellate court proceedings, and gave committee right to participate, and to file its own brief in support of bankruptcy court's decision); *In re General Store of Beverly Hills*, 11 B.R. 539 (9th Cir. B.A.P. 1981) (granting official committee right to participate in appeal on behalf of its members).

4. In addition, as suggested above, the public interest here clearly lies in facilitating an expeditious closing of the Santa Clara Sale, and the promotion and protection of "public health, safety and welfare" and "efficient chapter 11 administration" that such a result would entail. Any other outcome would not be in the best interests of either the Debtors' estates or the public at large. Consequently, the AG Stay Motion should be denied in its entirety

ARGUMENT

5. This Court should deny the Attorney General's request for a stay pending appeal in the AG Stay Motion for two reasons: (i) the Attorney General cannot establish that the Bankruptcy Court abused its discretion in denying the Attorney General a stay pending appeal; and (ii) the Attorney General cannot establish that any, let alone all, of the requisite factors for a stay pending appeal under Bankruptcy Rule 8007(b) and applicable precedent are met.

I. Bankruptcy Court Did Not Abuse Its Discretion in Denying the Attorney General Stay Pending Appeal

6. An application for a stay pending appeal is governed by Bankruptcy Rule 8007. Under Bankruptcy Rule 8007(a), "[o]rdinarily, a party must move first in the bankruptcy court . . . for a stay of the judgment, order, or decree of a bankruptcy court pending appeal." Fed. R. Bankr. P. 8007(a). Bankruptcy Rule 8007(b), in turn, provides that "a motion for the relief specified in subdivision (a)(1)—or to vacate or modify a bankruptcy court's order granting such relief—may be made in the court where the appeal is pending [and] if a motion was made in the

bankruptcy court, either state that the court has not yet ruled on the motion, or state that the court has ruled and set out any reasons given for the ruling." Fed. R. Bankr. P. 8007(b).

7. Where a bankruptcy court has denied a motion for stay pending appeal, review of the bankruptcy judge's decision is limited. *In re Irwin,* 338 B.R. 839, 844 (E.D. Cal. 2006). "Appellate courts are reluctant to entertain a request for stay unless it is demonstrated that the trial judge is unavailable or that the request was denied by the trial judge. Nevertheless, only in the former situation does the appellate tribunal normally exercise its own discretion; in other instances (such as where the trial court has denied the stay), the appellate court simply determines whether the trial court abused its discretion." *In re Wymer,* 5 B.R. at 807. "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." *Universal Life Church v. U.S.,* 191 B.R. 433, 447 (E.D. Cal. 1995), *aff'd and dismissed in part*, 128 F.3d 1294 (9th Cir. 1997); *see In re Marciano*, 2015 WL 12711641, at *3 (C.D. Cal. Mar. 27, 2015) ("The majority of courts in the Ninth Circuit have held that where, as here, the moving party first sought and was denied relief in the bankruptcy court, the district court merely reviews the bankruptcy court's decision regarding the stay under an abuse of discretion standard."); *In re First Korean Christian Church of San Jose*, 2018 WL 574888, at *4 (N.D. Cal. Jan. 26, 2018) ("When a bankruptcy court denies a stay in the first instance under Rule 8007(a), the district court's review is 'limited to a

determination of whether the bankruptcy court abused its discretion.'"); *In re Howrey LLP*), 2014 WL 3427304, at *2 (N.D. Cal. July 14, 2014) (same).

8. "Discretion will be found to have been abused when the judicial action is arbitrary, fanciful or unreasonable which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion." *In re Blackwell*, 162 B.R. 117, 119 (E.D. Pa. 1993).

9. Here, the Bankruptcy Court held a hearing, allowed the parties to brief the issues, reviewed all of the facts and arguments presented by the parties, and provided substantive, logical reasons for the decision it made, including (i) "the Attorney General's inability to identify any specific provision of California law that provides him with either authority to review the sale, or authority to insist that the Conditions continue to apply subsequent to the sale"; and (ii) "[f]ar from protecting public health and welfare, a stay would set in motion a series of events that, in all probability, would reduce the availability of healthcare services to the public." (Stay Ruling [AG App. Tab 14] at 3-6.) After exhaustively surveying the arguments presented by the Attorney General and the arguments and unrefuted evidence presented by the Debtors, the Committee, and Santa Clara County, the Bankruptcy Court concluded that the Attorney General had satisfied none of the four criteria for the issuance of a stay pending appeal. (*Id.* at 10; Transcript of January 30, 2019

Hearing ("Stay Hearing Transcript") [Debtor App. Tab 15] at 9-11, 15-16.) The Bankruptcy Court's decision was not arbitrary, fanciful, or unreasonable. Therefore, this Court should deny the AG Stay Motion because the Attorney General failed to establish any abuse of discretion by the Bankruptcy Court.

II. Attorney General Has Not, and Cannot, Satisfy Section 8007(b) Stay Pending Appeal Standard

10. To the extent this Court wishes to entertain the AG Stay Motion on the merits, the Court should (as did Judge Staton in the very similar *Gardens Regional* appeal) deny the relief requested because the Attorney General has failed entirely to meet its burden under the four-factor test for granting a stay pending appeal set forth in Bankruptcy Rule 8007(b) and applicable precedent. In determining whether to grant a stay pending appeal, a district court, in the context of an appeal from a bankruptcy court, considers the following four factors:

(i) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;

(ii) whether the applicant will be irreparably injured absent a stay;

(iii) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and

(iv) where the public interest lies.

In re Gardens Regional Hosp. & Med. Ctr., Case No. 17-cv-03708 JLS (Order Denying Motions for Stay Pending Appeal [Docket No. 21, at 6] (C.D. Ca., June 6, 2017) (Staton, J.); *Vitalich v. Bank of New York Mellon*, 2016 WL 2939235, at *2 (N.D. Ca. May 20, 2016); *In re Silva*, 2015 WL 1259774, at *4 (C.D. Cal. Mar. 17, 2015); *In re Rivera*, 2015 WL 6847973, at *2 (N.D. Cal. Nov. 9, 2015); *see also*

Velasquez v. Tejeda (In re Tejeda), 2019 Bankr. LEXIS 13, at *3 (Bankr. C.D. Cal. Jan. 3, 2019) (citing *Nken v. Holder,* 556 U.S. 418 (2009)); *see also In re Gardens Regional Hosp. & Med. Ctr.*, No. 17-17463-ER, Memorandum Decision [Docket 812] at 8–10 (Bankr. C.D. Ca. May 15, 2017) (denying stay in bankruptcy court under parallel standard).

11. A stay pending appeal "is not a matter of right, even if irreparable injury might otherwise result." *Virginian R. Co. v. U.S.*, 272 U.S. 658, 672 (1926). 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.* at 672–673; *In re Fullmer,* 323 B.R. 287, 293 (Bankr. D. Nev. 2005) ("[A] discretionary stay pending appeal is viewed as an extraordinary remedy.") The party requesting the stay is required to prove all four of the requisite elements; "'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. Haw. 1980) ("[I]f even one condition is not satisfied, the court will not issue a stay").

12. The first two factors of the Bankruptcy Rule 8007(b)(1) standard are the most critical. *In re Tejeda*, 2019 Bankr. LEXIS 13, at *3. It is not enough that the chance of success on the merits be "better than negligible." *Id.* By the same token, simply showing some "possibility of irreparable injury," *Abbassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998), fails to satisfy the second factor. *Id.* at 433–35. 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).

13. Provided the moving party meets a minimum threshold as to each factor, the Court may "balance the various stay factors once they are established." *Id.* 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.

14. Under the foregoing standard, the Attorney General has not, and cannot, satisfy any of the criteria for issuance of a stay pending appeal.

A. Attorney General Is Not Likely to Succeed On the Merits of Its Appeal

15. To satisfy the first criteria for obtaining a stay pending appeal—a likelihood of success on the merits of the appeal—the Attorney General must show it is likely to succeed on the merits of its appeal, and to do so by a stronger showing than a mere *prima facie* case. *Bayless v. Martine,* 430 F.2d 873, 879 (5th Cir. 1970). The Attorney General cannot meet this standard because—as set forth below and as was readily apparent from the *unrefuted* evidence before the Bankruptcy Court—he is unlikely to prevail in seeking reversal as to any of the three grounds on which the Bankruptcy Court overruled the Attorney General's objections to approval of the Santa Clara Sale (together, the "AG Objection" [AG App. Tabs 3, 5, 8 and 11]), as

reflected in (i) the Bankruptcy Court's Memorandum of Decision Overruling Objections of the California Attorney General to the Debtors' Sale Motion (the "Sale Memorandum") [AG App. Tab 14]); (ii) the transcript of the December 19, 2018 Sale Hearing (the "Sale Hearing Transcript" [Debtor App., Tab 13); and (iii) the Sale Order [AG App. Tab 15]:

- ***Waiver of Right to Object to Sale***. The Bankruptcy Court correctly found that the Response filed by the Attorney General on December 14, 2018 (the "AG Response" [AG App. Tab 8]) waived the Attorney General's right to object to a sale free and clear of the onerous conditions it had imposed on the Hospitals' operations in 2015 (the "Conditions"). (Sale Memorandum [AG App. Tab 14] at 5-6.) The Attorney General knew that the Debtors were seeking approval of the Santa Clara Sale free and clear of the Conditions because the APA contained unequivocal language to that effect. (*Id*. at 5) By filing the AG Response, the Attorney General voluntarily relinquished his right to object to the proposed free and clear sale. (*Id*.) In addition, the Bankruptcy Court properly declined to consider the testimony of Ms. Sierra and Mr. Press in determining whether the filing of the AG Response effected a waiver of the Attorney General's objections because, when litigating with a sophisticated party such as the Attorney General, the Debtors, Santa Clara, and other interested parties were entitled to presume that representations made by the Attorney General in papers filed with the Bankruptcy Court accurately reflected his position. (*Id*. at 6.)

- **Equitable Estoppel.** The Bankruptcy Court also properly concluded that, under the circumstances, the Attorney General should be equitably estopped from contesting the Debtors' ability to sell the Hospitals free and clear of the Conditions. (*Id*. at 7.) 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. (*Id*.) 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. (AG Response [AG App. 8] ¶ 1:8-9.) The Debtors and Santa Clara relied upon the Attorney General's representation to their detriment. (Sale Memorandum [AG App. Tab 14] at 7.) 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*.)

- **Free and Clear Sale.** Finally, turning to the merits, the Bankruptcy Court properly concluded, as a matter of law, that Section 363(f)(1) of the Bankruptcy Court authorized approval of the Santa Clara Sale free and clear of the Conditions. (*Id*. at 8-11.) Section 363(f)(1) provides

> that a sale of estate property may be "free and clear of any interest in such property of an entity other than the estate," if, among other circumstances, "applicable non-bankruptcy law permits sale of such property free and clear of such interest." 11 U.S.C. § 363(f)(1). The Conditions are correctly viewed as "interests in property" within the meaning of section 363(f) because, as set forth in greater detail in the Debtors' Opposition, the Conditions are the type of "monetary obligations arising from the ownership of property imposed by statute" that courts have found to be "interests in property" for purposes of section 363(f). (*Id*. at 10.) In addition, "applicable non-bankruptcy law" would plainly permit sale of the Hospitals free and clear of the Conditions because the Court properly concluded (as it reiterated in its Stay Ruling) 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, a public entity with same charitable mission and commitment to the public interest that the Attorney General contends the Conditions are intended to protect and preserve. (*Id*. at 10-11.)

16. The "free and clear sale" issue weighed especially heavily in the Bankruptcy Court's subsequent Stay Ruling, with respect to which Judge Robles concluded—as should this Court—that "the Attorney General's inability to identify any specific provision of California law that provides him with either authority to review the sale, or authority to insist that the Conditions continue to apply subsequent to the sale" is of "[o]f particular significance." (Stay Ruling [AG App. Tab 23] at 7.)

17. For all the foregoing reasons, the Attorney General has not shown either that he has "a substantial case for relief on the merits" or that there is "a sufficient likelihood of prevailing on appeal to support a stay," and, thus, has failed entirely to satisfy the first prong of the Bankruptcy Rule 8007(a)(1) standard. *In re Silva*, 2015 WL 1259774, at *4; *In re Tejeda*, 2019 Bankr. LEXIS 13, at *3.

B. Attorney General Will Not Suffer Irreparable Injury If Stay Pending Appeal Is Denied

18. The AG Stay Motion should also be denied because the Attorney General has not, and cannot, show that he would suffer irreparable injury if this Court does not stay the Sale Order pending disposition of the Attorney General's appeal.

19. The Attorney General argues he will be irreparably harmed absent a stay because the absence of a stay will render his appeal moot. (AG Stay Motion [AG App. Tab. 17] at 12–13].) As a result, the Attorney General contends, he will be unable to obtain appellate review of an important issue affecting the public health, safety, and welfare of the people of California. *Id*. The Attorney General's contentions in this regard fail for least two reasons.

20. *First*, as the Bankruptcy Court properly noted in its Stay Ruling, a majority of the courts that have considered the issue have concluded that mootness, in and of itself, does not demonstrate irreparable injury." (Stay Ruling [Debtor App. Tab 11] at 7); *see, e.g., In re Irwin,* 338 B.R. at 853 ("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 does not, standing alone, constitute irreparable injury" and citing cases).

21. In addition, as the Bankruptcy Court also found, even if a case could be made for such mootness rising to the level of "irreparable injury," the mooting of the AG Appeal would not do so here. (Stay Ruling [Debtor App. Tab 11] at 7.) The AG Appeal does not raise "important issues of state law" and the "lack of merits" readily discernible in the Attorney General's arguments require this Court to conclude, as did the Bankruptcy Court, that "the likelihood of mootness does not constitute irreparable injury." (*Id.*)

22. *Second,* the Attorney General is, as the undisputed evidence presented to the Bankruptcy Court made clear (Stay Hearing Transcript [Debtor App. Tab 15] at 15-16), a regulator without any tangible interest in consummation of the Santa Clara Sale. Permitting the Santa Clara Sale to close without the Attorney General's review, or imposition of the Conditions, will in no way harm the public, which the Attorney General claims to protect, because the Santa Clara Sale involves the transfer of non-profit assets to a "public"—not a "for-profit"—entity. (*Id.* at 16.) Thus, the Santa Clara Sale will not affect "the charitable use of [the Debtors'] assets" or "the availability of community health care services" because public entities, like Santa Clara, are required by law to furnish comparable healthcare services to those in need. Cal. Welf. & Inst. Code §17000 (2019). Indeed, Santa Clara County has stepped in here to ensure that its citizens receive the healthcare services they require when no one else was willing to undertake that responsibility. Thus, if the Santa Clara Sale is permitted to close, as contemplated under the Sale Order, the thousands of

Santa Clara residents that currently avail themselves of the Hospitals' services will continue to be able to do so without the disruption and delay likely to be caused if consummation of the Santa Clara Sale is stayed.

23. Nor has the Attorney General proffered any other examples of how his review and approval, or the preservation of his appeal rights by issuance of the requested stay, would be of particular benefit to anyone—other than generally stating that he seeks to guard against the risk that other entities will somehow use the Debtors' example as a precedent to evade the Attorney General's review and approval authority in the future. (AG Stay Motion [AG App. Tab 17] at 12–13.) This hypothetical concern about something that may or may not come to pass in the future is far outweighed by the immediate and real public health issues caused by the Santa Clara Sale not closing in a timely fashion and the consequent likelihood that the Hospitals might need to be shut down.

C. Debtors Will Suffer Substantial Injury If Stay is Granted

24. The Debtors, by contrast—together with their estates, creditors, other stakeholders, and the larger Santa Clara community—will suffer substantial injury if the requested stay pending appeal is granted. For the Debtors, unlike the Attorney General, time and opportunity are forms of currency (*i.e.*, money), and the delay and uncertainty likely to be engendered by issuance of a stay will have a material adverse impact on the Debtors' prospects.

25. Under the DIP Facility, the Final DIP Order, and the APA, there are both time limitations and a finite budget for concluding the Debtors' sale process. There will be, as the Attorney General concedes, "additional interest on any debt that has to be paid if the Debtors are prohibited from closing the transaction." (AG Stay Motion [App. Tab 17]) at 13.) In addition, however, incremental debt will need to be incurred under the DIP Facility, which will, at a minimum, further limit any recoveries likely to be available to the Debtors' unsecured creditors in these chapter 11 cases and, in the end, drain the Debtors' availability under the DIP Facility. The Debtors will be unable to fund the Hospitals' ongoing operations for the period of time likely to be required for prosecution and disposition of the Attorney General's appeal and, thus, granting the stay will increase exponentially the likelihood that the Hospitals will ultimately be shut down.

26. Even more significant are the time limitations imposed by the overall circumstances of the Sale. The longer the sale process takes, the less value the Purchased Assets will have for any purchaser because the Purchased Assets are depreciating rapidly the longer they linger in chapter 11 limbo. Additionally, if this Court eventually were to unwind the Santa Clara Sale—in contravention of section 363(m)—further postponement in disposition of the Purchased Assets could only result in even less money being available for creditors.

27. In addition, as the Bankruptcy Court found in the Stay Ruling, "[t]he Debtors have expended significant resources in reliance upon the Sale Order,

with "[m]ore than 100 people . . . working with representatives of Santa Clara County to effectuate the transfer of the Hospitals' operations." (AG Stay Ruling [Debtor App. Tab 11] at 8.) Employee morale and retention also hang in the balance, with employees continuing to leave due to the uncertainties caused by the chapter 11 process. (*Id.*) If the Santa Clara Sale collapses, "all of that work will have been wasted" and employee attrition will rise exponentially.

28. For all the foregoing reasons, the harm that will befall the Debtors, their creditors, and the Santa Clara community at large if a stay is granted is, based upon the *unrefuted* evidence presented by the Debtors and Santa Clara County, far more concrete and substantial than the theoretical, unfounded injury the Attorney General claims.

D. Public Interest Lies In Expeditious Consummation of Santa Clara Sale

29. Finally, the AG Stay Motion should be denied because here the "public interest" lies in protecting the twin goals of "efficient chapter 11 administration" and "protection of public health, safety and welfare," and both of these objectives would be better served by expeditious consummation of the Santa Clara Sale.

30. *First*, as a threshold matter, the Attorney General ignores entirely the bankruptcy policy aspect of the "public interest" that is in play in connection with the AG Stay Motion. As the Bankruptcy Court elsewhere noted, "[t]here is a great public interest in the efficient administration of the bankruptcy system." *In re Gardens*

Regional Hosp. & Med. Ctr., No. 17- 17463-ER, Memorandum Decision [Docket 812] at 10 (Bankr. C.D. Cal. May 15, 2017) (quoting *Adelson v. Smith (In re Smith),* 397 B.R. 134, 148 (Bankr. D. Nev. 2008)). By seeking a stay that will delay and potentially derail the Santa Clara Sale, the Attorney General seeks to interfere with the efficient administration of the bankruptcy system without being able to invoke any colorable legal basis for such interference.

31. It is a basic premise of the Bankruptcy Code's public policy to maximize the value of debtors' estates for the benefit of creditors. Here, by virtue of the combination of (i) orchestrating a competitive sale of the Purchased Assets and (ii) finding that the Attorney General's interest in the Purchased Assets will terminate upon consummation of a section 363 sale, the Bankruptcy Court has served this policy well by helping to maximize the recoveries of the Debtors' various stakeholders. If the Santa Clara Sale is permitted to close, more than $230 million will be made available for payments to creditors that otherwise would not have been made, and which may never be made if the Attorney General is permitted to use the stay pending appeal it requests to stand in the way of consummation of the Santa Clara Sale.

32. *Second*, and even more significant, are the benefits to "public health, safety and welfare" that an expeditious closing of the Santa Clara Sale will yield. Ignoring these benefits, the Attorney General's overarching argument for granting the requested stay is that eventual re-imposition of the Conditions "would promote the public's interest" by protecting "the public health, safety, and welfare of

the people of California." (AG Stay Motion [AG App. Tab 17] at 12–13.) However, his arguments are without merit for at least two reasons.

33. *First*, as set forth above, permitting the Santa Clara Sale to close without the Attorney General's review, or imposition of the Conditions, will in no way harm the public, which the Attorney General claims to protect, because the Santa Clara Sale involves the transfer of non-profit assets to a public—not a for-profit—entity, and, thus, it will promote, and not diminish, "the charitable use of those assets" and "the availability of community health care services" because public entities, such as Santa Clara are required by law to furnish comparable healthcare services to those in need. Cal. Welf. & Inst. Code §17000.

34. *Second*, any greater or different benefit claimed by the Attorney General for the Conditions is undermined by the adverse consequences already left in their wake. It was, as reflected in the *unrefuted* evidence presented to the Bankruptcy Court by the Debtors and Santa Clara County, the Conditions that stood in the way of a sale to Prime Healthcare Services at a higher price in 2014. (Stay Hearing Transcript [Debtor App. Tab 15] at 9-11, 15-16.) It was also the Conditions that played no small part in the financial distress that caused the Debtors to seek chapter 11 relief in November 2018. To permit the Conditions to derail the Santa Clara Sale would, as the Bankruptcy Court found in its Stay Ruling, add insult to injury, could place the health, safety and welfare of thousands of Santa Clara county residents at risk, and should not be countenanced by this Court. (Stay Ruling [Debtor App. Tab

11] at 9 ("Far from protecting public health and welfare, a stay would set in motion a series of events that, in all probability, would reduce the availability of healthcare services to the public.") Thus, there is no reason to grant the requested stay and every reason to deny it.

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35. In order to obtain the stay pending appeal it requests, the Attorney General was required to establish all four factors contemplated by the Bankruptcy Rule 8007(b)(1) standard. Because the Attorney General has failed to establish any of these four factors, the AG Stay Motion should be denied in its entirety.

III. Alternatively, If Stay Is To Be Granted, It Should Be Conditioned Upon Posting of Appropriate Bond

36. In the alternative, if this Court were inclined, for any reason, to grant a stay, applicable law requires that the stay be conditioned upon the posting of a bond sufficient to protect the Debtors and their stakeholders from irreparable injury. Fed. R. Bankr. P. 8007(c); *see In re United Merchs. & Mfrs., Inc.*, 138 B.R. 426, 430 (D. Del. 1992) (purpose of such a bond "is to protect the adverse party from potential losses resulting from the stay"); *Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 782 (10th Cir. 1964) (court has "wide discretion in the matter of requiring security"). Courts may only waive the bond requirement in "exceptional circumstances." *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 350 (Bankr. S.D.N.Y. 2007), and only where the movant has met its "burden of demonstrating why the court should deviate

from the ordinary full security requirement." *In re 473 W. End Realty Corp.*, 507 B.R. 496, 501–02 (Bankr. S.D.N.Y. 2014).

37. Here, any stay would, among other risks, jeopardize consummation of the Santa Clara Sale, and, thereby put the Debtors' businesses at risk of liquidation, impose additional costs of administration on these chapter 11 cases, diminish creditor recoveries, and, most importantly, potentially deny the Hospitals' patients access to essential medical services. If the requested stay pending 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, other stakeholders, and the Santa Clara community at large from any injury resulting from an unsuccessful appeal. Accordingly, if the Court were inclined to grant the stay request, the Attorney General should, for the reasons and in accordance with the calculation methodology set forth in the Debtors' Opposition, be required to post a bond in the amount of $350 million, and in no event less than $235 million. (Debtors' Opp. at 44-47.)

CONCLUSION

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

DATED: February 11, 2019

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