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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-RGK

Bankruptcy Court Lead Case No.:

2:18-bk-20151-ER

Xavier Becerra
Attorney General of California,
Appellant.

Hon. R. Gary Klausner

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;
DECLARATIONS IN SUPPORT
[RELATES TO DOCKET NO. 6]**

Hearing:

Date: February 22, 2019

Time: 9:30 am

**Location: Courtroom 850, 255 E. Temple
Street, 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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80057

800724

8007(a)(1)8

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Verity Health System of California, Inc. (“Verity”), and 16 affiliated entities (collectively, the “Debtors”), filed for bankruptcy, which constituted the second largest hospital bankruptcy filing in American history. The chapter 11 bankruptcy cases involve six acute care operating hospitals, two of which—O’Connor Hospital and Saint Louise Regional Hospital (collectively, the “Hospitals”)—are located in Santa Clara County. The Bankruptcy Court entered an order authorizing the Debtors to sell these two Hospitals to the County of Santa Clara (the “County”).

Through his motion for a stay pending appeal, the California Attorney General (“AG”) asks this Court to reject reasoned decisions by the Bankruptcy Court and to block the sale of these two Hospitals to the only entity willing to buy them—the County. A stay would terminate the County’s purchase of the Hospitals, result in their closure, and would eviscerate healthcare access for some of the County’s neediest residents.

The AG 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 health system for more than a century. Instead, the AG’s sole basis for seeking a stay is to protect his purported authority to unilaterally impose conditions on the sale of the Hospitals to any buyer, including a public entity such as the County. However, in seeking the instant stay, the AG blithely ignores the Bankruptcy Court’s well-reasoned determinations that (i) the California Corporations Code grants the AG no authority whatsoever in sales of non-profit hospitals to public entities, (ii) the AG offered no authority to support his position, and (iii) in any event, he failed to appropriately raise these arguments below.

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The Bankruptcy Court correctly held that the AG had no authority to impose conditions on the sale to the County because a public entity like the County does not fall within the purview of California Corporations Code § 5914(a)(1), the statute he purports to enforce. Moreover, the specific conditions the AG seeks to impose here—conditions his office imposed on Verity in 2015 (the “2015 Conditions”)—are an “interest in property” under § 363(f) of the Bankruptcy Code, and, thus, Debtors may sell the Hospitals “free and clear” of the 2015 Conditions via the bankruptcy proceedings. Remarkably, the AG does not even attempt to substantively address the foregoing issues, which were carefully analyzed by the Bankruptcy Court. Instead, the AG simply discusses his likelihood of success on the merits in broad strokes, by generally referencing the authority used to impose the 2015 Conditions against Verity, a private entity, and stating he needs power to protect the public health, safety, and welfare of the People of California. The AG’s assertions regarding his purported authority to supervise sales of charity hospitals to public entities ignores the fact that the State Legislature expressly delegated *to counties* the relevant authority to protect the health, safety, and welfare of their residents, and, as such, the AG’s “supervision” over this sale to the County is both improper and unnecessary.

In attempting to expand the scope of his power to encompass the sale of these Hospitals to the County, the AG ignores the dire impact that the closure of these Hospitals would have on the health and well-being of surrounding communities. In concluding that the AG did not carry his burden on *any* of the required factors for the extraordinary measure of staying the sale of the Hospitals, 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 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.

For the reasons set forth below, the Debtors respectfully request that this Court deny the Motion. If this Court grants a stay despite the risks to the Debtors and the County and the AG's slim likelihood of success on the merits, the Court should require the AG to post a \$350 million bond, to protect the Debtors from the damages they may incur as the AG litigates against the interests of the Debtors, the communities the Hospitals serve, the Hospital employees, and, most importantly, the patients who receive care and treatment at the Hospitals.

II. STATEMENT OF FACTS

A. General Background.

1. On August 31, 2018, the Debtors each filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").² See *Appellee's Appendix ISO Opposition to the AG's Motion For Stay Pending Appeal* (the "Debtors' Appendix") No. 1-3, at 1-72.³

2. Verity, a California nonprofit public benefit corporation, operates six acute care hospitals, including the Hospitals: Saint Louise Regional Hospital ("Saint Louise") and O'Connor Hospital ("O'Connor"). Debtors' Appx. No. 4, at 77.

3. Saint Louise is a 93-bed hospital that provides 24-hour emergency care, cancer treatment, inpatient and rehabilitation services, as well as surgical care. Debtors' Appx. No. 4, at 84, 85. Saint Louise also operates the De Paul Urgent Care Center, which offers non-emergency medical services seven days a week. Debtors' Appx. No. 4, at 85.

4. O'Connor is a 358-bed general acute care hospital that serves residents in the greater San José area. The hospital has a 24-hour emergency department, eleven surgical operating rooms and two cardiac catheterization labs. The hospital

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.

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

1 offers comprehensive healthcare services, including emergency, cardiac, orthopedic,
2 cancer, obstetrics, and sub-acute services. Debtors' Appx. No. 4, at 81. Verity
3 purchased the Hospitals in 2015, and the AG imposed the 2015 Conditions on Verity
4 as part of that purchase pursuant to the AG's authority under the Corporations Code.
5 AG Appx. Doc. 1, at 6-7.

6 **B. The County Communicated Its Commitment to Maintain Services at the**
7 **Hospitals Directly to the AG.**

8 8. Shortly after Verity filed for bankruptcy, the County Executive, Dr.
9 Jeffrey Smith, attended a meeting at which he discussed the County's intent to buy
10 the Hospitals with the AG himself. In that meeting, Dr. Smith affirmed the County's
11 commitment to public health and to maintaining the services provided at the
12 Hospitals to benefit all residents of its community. AG Appx No. 18 at 1149, ¶ 12-
13 Dr. Smith reiterated that the "health, safety and welfare" of the community "will
14 be protected and that essential health care services will continue to be provided to
15 persons in need [. . .] at the same or greater [current] level." *Id.* at ¶ 12.

16 **C. The County Was the Sole Entity Willing to Purchase the Hospitals.**

17 9. On October 1, 2018, the Debtors filed a motion (the "Bidding
18 Procedures Motion") seeking, among other things, approval of the bidding
19 procedures for the auction and sale of the Hospitals and the form of the Asset
20 Purchase Agreement (the "APA") with the County. AG Appx.,⁴ No. 2, at 437-568.

21 10. Following a hearing, the Bankruptcy Court entered an order approving
22 the Bidding Procedures Motion motion (the "Bidding Procedures Order"). Debtors'
23 Appx. No. 6, at 221-254. The Bidding Procedures Order identified the County as the
24

25 ⁴ All citations to the "AG Appx." are to the Appendix ISO AG's Emergency Motion
26 to Stay the Bankruptcy Court's Order Authorizing the Sale of Certain of the Debtor's
27 Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and
28 Other Interests, and Memorandum of Decision Overruling Objections of the
California Attorney General [Docket No. 8].

1 “Stalking Horse Bidder” and approved the form of the APA setting forth the terms
2 under which the County would buy the Hospitals. AG Appx. No. 2, at 489-568.

3 11. Ultimately, after extensive marketing efforts by the Debtors, no other
4 entity placed a bid to buy the Hospitals, or requested an extension of time to bid. *See*
5 Debtors’ Appx. No. 9, at 290-293; Debtors’ Appx. No. 8, at 259-260.

6 **D. The Bankruptcy Court Approves the Sale Over the AG’s Objection.**

7 12. On December 12, 2018, the Debtors filed a memorandum seeking entry
8 of an order approving the sale of the Hospitals to the County [AG Appx. No. 7, at
9 860-892], and explicitly requested that the sale order (the “Sale Order”) be “effective
10 immediately upon entry.” AG Appx. No. 7, at 881-82. On December 14, 2018, the
11 AG filed a response, stating that “**the California Attorney General does not object**
12 **to the sale to the County of Santa Clara [. . .].**” (the “No Objection Response”)
13 (emphasis added). AG Appx. No. 8, at 895.

14 13. On December 19, 2018, the Bankruptcy Court held the Sale Hearing,
15 where counsel for the AG contradicted the position taken in the AG’s prior filing,
16 indicating that, despite the No Objection Response, the AG did indeed oppose the
17 sale because the sale would not require County to comply with certain of the 2015
18 Conditions including maintaining specific services at O’Connor and Saint Louise.
19 *See* Debtors’ Appx. No. 13, at 374-75. The Debtors objected to the AG’s opposition
20 to the sale as expressed at the Sale Hearing given the AG’s prior filing of the No
21 Objection Response. On December 21, 2018, the Bankruptcy Court issued its *Order*
22 *Providing Notice of The Bankruptcy Court’s Intent to Authorize the Debtors to Sell*
23 *Hospitals Free and Clear of the 2015 Conditions Asserted by the California Attorney*
24 *General*, AG Appx. No. 9, at 908-917, wherein the Bankruptcy Court indicated that
25 it intended to approve the sale notwithstanding the AG’s objection, but allowed
26 parties to file additional responses by December 24, 2018. AG Appx. No. 11, at 922-
27 942; No. 10, at 918-921.

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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], wherein it (i) overruled the AG's objections, and (ii) held that the AG had waived its objections and was equitably estopped from asserting them. AG Appx. No. 14, at 982-983.

16. On December 27, 2018, the Bankruptcy Court entered the Sale Order [AG Appx. 15, at 984-1008], which provided, among other things: "The Debtors have demonstrated good and sufficient cause to waive the stay requirement under Rules 6004(h) and 6006(d). . . . The Bankruptcy Court finds that there is no just reason for delay in the implementation of this Order[.]" See AG Appx. No. 15, at 991, 1003-1004.

E. The AG'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 AG filed a motion for stay pending appeal seeking to stay the Sale Order (the "Bankruptcy Stay Motion"). AG Appx. No. 17, at 1055-87.

19. The County then undertook substantial, good faith efforts to address the AG's concerns by confirming its commitment to continue operating the Hospitals in a manner that would preserve health care access for the communities served by the Hospitals. On January 14, 2019, the County sent a letter to the AG 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, 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. See Declaration of James Williams, at ¶ 4, Exh. A. The letter also stated that the County was willing to enter into a

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1 memorandum of understanding with the AG regarding the County's commitment to
2 operate the Hospitals in a manner that will ensure health care access. *Id.* at Exh. A.

3 20. On January 15, 2019, County leaders traveled to Sacramento to meet in
4 person with the AG's staff to discuss the County's commitment and willingness to
5 enter into a binding agreement regarding the issues that the AG said were the basis
6 for his Stay Motion. Supplemental Declaration of Jeffrey Smith, M.D., J.D.
7 ("Supplemental Smith Dec") at ¶¶ 12-13. The AG, however, summarily rebuffed
8 these efforts. *Id.*

9 **F. The Bankruptcy Court Denies the AG's Motion for Stay.**

10 22. On January 30, 2019, the Bankruptcy Court issued a tentative ruling on
11 the Bankruptcy Stay Motion holding that the AG failed to carry his burden on *any* of
12 the required factors for the extraordinary measure of staying the Sale Order. The
13 tentative ruling stated: "**The most probable outcome of a stay would be the
14 collapse of the sale. If the sale collapsed, there is a strong possibility that the
15 Debtors would lack sufficient funds to maintain operations pending a sale to
16 another buyer, and would be required to close the Hospitals. Closure of the
17 Hospitals, even if it were temporary, would severely harm the public interest.**"
18 Debtors' Appx. No. 11, at 332 (emphasis added).

19 23. On January 30, 2019, the Bankruptcy Court held a hearing on the
20 Bankruptcy Stay Motion, and stated its intent to adopt its tentative ruling as its final
21 ruling. Debtors' Appx. No. 11, at 324-333.

22 24. Thereafter, before the Bankruptcy Court had issued its order, the AG
23 filed his Motion in this Court on February 1, 2019.

24 25. On February 5, 2019, the Bankruptcy Court entered an order denying
25 the Bankruptcy Stay Motion with prejudice. Debtors' Appx. No. 12, at 334-37.

26 **III. STANDARD OF REVIEW**

27 **A. THE BANKRUPTCY COURT'S DECISION TO DENY THE STAY IS**
28 **REVIEWED FOR ABUSE OF DISCRETION.**

Bankruptcy Rule 8005 required the AG to first present his motion requesting a stay to the Bankruptcy Court. Fed. Bankr. R. 8005. Where, as here, a bankruptcy court has denied a motion for stay pending appeal, review of the bankruptcy judge's decision by a district court is limited to whether the bankruptcy court abused its discretion in denying the stay. *In re Irwin*, 338 B.R. 839, 846-48 (E.D. Cal. 2006); *Universal Life Church v. U.S.*, 191 B.R. 433, 444 (E.D. Cal. 1995); *In re Wymer*, 5 B.R. 802, 807 (B.A.P. 9th Cir. 1980). The Bankruptcy Court applied the proper legal standard in assessing the AG's stay motion, and, thus, this Court may only overturn the Bankruptcy Court's decision if it finds that decision was illogical, implausible, or without support in the record. *See United States v. Hinkson*, 585 F.3d 1247, 1251 (9th Cir. 2009) (en banc).

B. THE AG BEARS THE BURDEN OF SATISFYING THE STANDARD 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.*

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 AG, as the party requesting entry of a stay pending appeal, bears the burden of establishing all four of the above-cited factors. *In re F.G. Metals, Inc.*, 390 B.R. 467, 472 (Bankr. M.D. Fla. 2008). The AG is required to prove *each* of these

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four 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)). 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 v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011). 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)).

IV. ARGUMENT

A. **THE AG’S MOTION IS FACIALLY DEFECTIVE BECAUSE IT FAILS TO APPRISE THIS COURT OF BASIC FACTS DIRECTLY RELEVANT TO THE MOTION.**

The AG’s Motion fails to apprise this Court of the basic factual background relevant to the Motion, and instead buries the relevant facts in a 1000+ page Appendix. For example, the Motion: (i) fails to inform this Court that the AG filed a response stating that he had no objection to the Sale [AG Appx. No. 8, at 895]; (ii) does not explain that the Bankruptcy Court held a Sale Hearing and considered his objection (or attach the transcript) [Debtors’ Appx. No. 13, 338-91]; (iii) does 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 323-33]; and, (iv) fails to inform this Court that the Bankruptcy Court excluded, under Federal Rule of Evidence 403, the alleged unrecorded, parol discussions with the County’s attorneys that the AG trumpets in his Motion. AG Appx. No. 14, at 976-977; *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 . . .”).

B. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN HOLDING THAT THE AG DID NOT SATISFY THE FACTORS REQUIRED FOR A STAY.

1. The AG Cannot Demonstrate Likelihood of Success on the Merits

The AG must demonstrate that he is likely to succeed on the merits of his appeal in order to obtain a stay. As explained by the U.S. 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).

The Bankruptcy Court correctly held that not only had the AG failed to demonstrate a likelihood of success on the merits, the AG *provided no support* from the relevant statutes or regulations to support his assertion that he can impose conditions on the County, a public entity. AG Appx. No. 14, at 981-82. Further, the AG makes no cogent arguments about why § 363(f) does not control over any state law pursuant to which the AG would seek to impose the 2015 Conditions. As the Bankruptcy Court held, the 2015 Conditions are precisely the kind of interests that bankruptcy courts nationwide regularly discharge under § 363. AG Appx. 14, at 980-82.

i. The AG Has No Authority to Impose Conditions on the Sale of the Hospitals To The County.

The AG improperly seeks to expand his authority beyond that provided by the California Legislature. Section 5914 of the California Corporations Code (“Section 5914”) provides that the sale of a not-for-profit healthcare facility is subject to AG review only 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 grant the AG authority to review sales of non-profit healthcare facilities to public entities, including the County, which is 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”). As the Bankruptcy Court found, the proposed sale to the County is not subject to AG review because the County is not one of the types of entities listed in Section 5914.⁵

This is a substantive distinction, not a technical one. The California Legislature, through its conscious omission of public entities in Section 5914, specifically allowed public entities (directly responsible to the hospitals’ public stakeholders via local elections) to purchase hospitals and ensure health care access through the laws applicable to counties. *See* AG’s Nov. 9, 2018 Letter to the County (“AG to County Letter”) [AG Appx. No. 8, at 902-905]; *see also generally*, *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383 (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 . . .”). Section 5914 makes abundantly clear the statute’s applicability—and corresponding *inapplicability*.

Instead, the California Legislature clearly and expressly delegated relevant authority to the County to purchase and operate facilities such as the Hospitals for the benefit of their residents. 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. With regard to the health and welfare of the County’s most vulnerable residents, the California Legislature could

⁵ The Bankruptcy Court held: “neither Cal. Corp. Code § 5926 nor any of the other provisions set forth in Cal. Corp. Code §§ 5914-30 provide the AG with authority to enforce the Conditions against Santa Clara if Santa Clara acquires the Hospitals.” *See* AG Appx. No. 14, at 980.

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).

The California Legislature excluded counties from the buyers on which the AG can impose conditions because the Legislature had already directly imposed on counties wide-ranging obligations to provide comprehensive care to the poor, uninsured, and underinsured. *See, e.g.*, Health & Safety Code § 1440 *et seq.* (health and safety of county hospital); 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).

Consequently, the AG’s invitation to this Court to afford him “deference to interpret” applicable law [Motion, at 14: lns. 21-23] rings hollow because California law plainly affords him no authority over this public entity transaction. Further, the AG’s contention 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 record, the County is committed to providing healthcare services to its residents (in compliance with applicable California law), has provided the AG assurance of the foregoing in writing, and presented the AG with a proposed binding memorandum of understanding under which the County would agree to be contractually bound to follow the law and provide these services to the Santa Clara County community through the Hospitals. *See generally* Williams Decl.; Supplemental Smith Decl.; *see also* County to AG Letter, attached to Williams Decl. as Exh. A.

Indeed, the AG has already conceded this point by: (1) waiving certain conditions at the County and Debtors' request, without any discussion of the impact on community health services [Debtors' Appx. Nos. 5, 7, at 130-220, 255-27]; and (2) publicly acknowledging that a number of the 2015 Conditions should and would not be enforced as to the County because of superseding state laws. *See* AG Appx., at 902-905, AG to County Letter.⁶ The absurdity of the AG's desire to impose the 2015 Conditions example is demonstrated by the fact that one of the conditions requires the purchaser of the Hospitals to enter into contracts with Santa Clara County.⁷ Clearly, the County cannot be obligated to enter into a contract with itself, and such an absurd condition confers no public benefit with the County as the purchaser.

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

The AG asserts that the imposition of the 2015 Conditions is an exercise of his police and regulatory power, which cannot be extinguished through a § 363(f)(1) sale despite such sale's defining statutory feature of being "free and clear." However, § 363 does not contain an exception that preserves conditions on property imposed pursuant to police or regulatory authority, and the AG cites no authority for the position that such an exception should be presumed to exist. 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 363, by distinction, does not contain any such reference to Police Power.

"[I]t is generally presumed that Congress acts intentionally and purposely

⁶ In the AG to County Letter, the AG acknowledged the superseding state Constitutional and statutory law as to five sets of the 2015 Conditions.

⁷ The existence of these conditions demonstrates that the AG 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.

1 when it includes particular language in one section of a statute but omits it in
 2 another.” *Chicago v. Env’tl. Defense Fund*, 511 U.S. 328, 338 (1994) (internal
 3 quotation marks omitted). “Had Congress intended to restrict” § 363(f) with regard
 4 to Police Power, “it presumably would have done so expressly as it did in the
 5 immediately” preceding section. *Russello v. United States*, 464 U.S. 16, 23 (1983);
 6 *see also In re DBSI, Inc.*, 869 F.3d 1004, 1012 (9th Cir. 2017).

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

8 Without any support, the AG also takes the position that, purportedly under
 9 application of contractual law principles, a private party can expand the AG’s
 10 regulatory reach (beyond that which was provided in statute) to enable himself to
 11 regulate the County in this transaction. The AG further asserts that his exercise of
 12 police power requires the application of non-bankruptcy law to a bankruptcy sale
 13 insofar as the 2015 Conditions should attach to the County as successor; in other
 14 words, that bankruptcy law providing for a “free and clear” sale does not preempt his
 15 alleged state law ability to bind the County to the 2015 Conditions. These assertions
 16 are as remarkable as they are unsupported.

17 In essence, the AG argues that the ambit of his legislatively conferred
 18 regulatory authority—over private entities only—can be, and was, extended to cover
 19 public entities, by way of a condition assented to by a private entity. Both separation
 20 of powers and principles of statutory construction prevent this attempt to expand the
 21 reach of the charitable trusts law. In that vein, the AG fails to identify any specific
 22 “non-bankruptcy law”—either statute or regulation—that allows him to impose the
 23 2015 Conditions on successor entities (especially where, as with the County, he has
 24 no power to review the transaction in the first instance). Moreover, broadly speaking,
 25 bankruptcy law preempts state law with regard to successor liability. *See, e.g., Volvo*
 26 *White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit*
 27 *Corp.)*, 75 B.R. 944, 950-51 (Bankr. N.D. Ohio 1987) (holding that bankruptcy law
 28 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).

The imposition of successor liability in this context would effectively defeat the possibility of selling the Debtors' assets "free and clear" of the Debtors' liabilities, resulting in purchasers being unwilling to pay as much for those assets. This is contrary to 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 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 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]; *see also In re Gardens*, 567 B.R. at 825-830 (bankruptcy court held AG's authority to impose charitable care conditions on a buyer as part of the AG'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.).⁸

(a) The AG Waived His Objection To The Sale.

⁸ Other courts have further held that such conditions can be cut off by a sale under § 363. *See In re Tougher Industries*, 2013 WL 1276501, **6-9 (Bankr. N.D.N.Y. March 27, 2013) (purchasers in bankruptcy argued that the assets were free and clear of any interests, including the debtors' not-so-favorable unemployment insurance experience rating; the bankruptcy court agreed.); *see also In re PBBPC, Inc.*, 484 B.R. 860, 869 (B.A.P. 1st Cir. 2013) (insurance contribution rate of employer is "interest" subject to § 363(f)).

“[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). Here, the AG conceded that waiver is a question of fact. *See* Motion at 14. As importantly, the AG cannot succeed on the merits of his appeal, because the Bankruptcy Court correctly held that he waived his ability to object to the sale of the Hospitals to the County.

The Bankruptcy Court correctly identified the central, uncontroverted facts that established the AG’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.”
- 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. *See In re Konig*, 2015 WL 5076977, at *7 (Bankr. C.D. Cal. Aug. 27, 2015) (objection on only one ground was a waiver of an objection of another ground that

1 the party was aware of but failed to include). Moreover, the facts are even clearer,
2 as the AG filed an affirmative statement of no objection to the sale.⁹

3 In fact, the AG does not even attempt to oppose the Bankruptcy Court's
4 findings of waiver as to the Debtors, but instead focuses solely on the County. *See*
5 Motion, at 15. This complete failure by the AG to address the Bankruptcy Court's
6 explicit finding of waiver *as to the Debtors* is itself a waiver yet again, this time on
7 appeal. Further, the Bankruptcy Court correctly concluded that the parol statements
8 between counsel for the AG and the County, upon which the AG relies to excuse his
9 filing of a statement of non opposition, are unavailing,¹⁰ and in any event a statement
10 by the AG is only a defense against waiver as to Debtors if that statement was made
11 to *the Debtors*. *See Houk v. Vill. of Oak Lawn*, 1987 WL 7498, at *2 (N.D. Ill. Feb.
12 26, 1987) (determining relevancy of statement for waiver "what matters is when each
13 [party] heard those statements").

14 ***(b) The AG Is Estopped From Objecting To The Sale.***

15 The Bankruptcy Court correctly identified the four elements of equitable
16 estoppel: 1) The party to be estopped must know the facts; 2) the party must intend
17 that their conduct shall be acted on or must so act that the party asserting the estoppel

18
19 ⁹ *See also Rivero v. J.P. Automobiles, Inc.*, 1997 WL 35386195, at *6 (D. Haw. Aug.
20 5, 1997) ("Defendant is estopped [because] Defendant is bound by the statements
21 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).

22
23 ¹⁰ AG Appx. No. 14, at 976-977 [Bankr. Docket No. 1146, at 5]. The Court also
24 correctly found that, under the Federal Rules of Evidence, unrecorded, alleged parol
25 and oral conversations between the parties taking place before the filing of the No
26 Objection Response were superseded by an official filing and that "parties are entitled
27 to presume that representations made by the AG in papers filed with the Court
28 accurately reflect his position. Allowing the AG, 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].

1 has a right to believe it is so intended; 3) the latter must be ignorant of the true facts;
 2 and 4) the party asserting the estoppel must rely on the former's conduct to his injury.
 3 *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 955 (9th Cir. 2014); AG Appx.
 4 No. 14, at 978 [Bankr. Docket No. 1140]. Applying these factors, the Bankruptcy
 5 Court found: "*The Debtors and Santa Clara had no way of knowing that when the*
 6 *Attorney General stated that he did 'not object to the sale to the County of Santa*
 7 *Clara,' what he really meant was that he did not object except to the extent that he*
 8 *did object. Id.* (emphasis added).

9 Notably, the AG continues to avoid making any compelling arguments related
 10 to the Debtors (despite the Bankruptcy Court's ruling), and instead entirely focuses
 11 on the County). Moreover, the AG's arguments regarding alleged discussions with
 12 the County (about his purported intentional filing of a contradictory written
 13 representation), where the Debtors were not present and did not participate, are
 14 irrelevant in the estoppel context because "equitable estoppel requires affirmative
 15 actions *towards the party claiming estoppel.*" *San Diego Comic Convention v. Prod.*,
 16 2018 WL 4026387, at *3 (S.D. Cal. Aug. 23, 2018) (emphasis added). So, for "the
 17 question of estoppel, while the intention of the parties sought to be estopped may be
 18 significant, *the emphasis is on the actions of the party arguing estoppel.*" *Mitchell*
 19 *v. Aetna Cas. & Sur. Co.*, 579 F.2d 342, 347 (5th Cir. 1978).

20 Regardless, the Bankruptcy Court's exercise of discretion, founded on its
 21 observation and experience of the Sale process, its docket, and common sense (for
 22 instance, it is reasonable to understand that the words "does not object" mean that the
 23 party will not object) should not be overturned. *See Karcsh v. Bd. of Directors*
 24 *Ventura Country Club Cmty. Homeowners Ass'n*, 2011 WL 1740626, at *4 (E.D. Pa.
 25 May 5, 2011).¹¹ This Court should accordingly uphold the Bankruptcy Court's
 26 factual finding of estoppel.

27 _____
 28 ¹¹ Further, the AG's reliance on California law and California cases for the question
 of waiver or estoppel in a bankruptcy sale is misplaced, because "where federal

1 **2. The AG Will Not Suffer Irreparable Injury.**

2 The AG will suffer no injury as a result of the sale of a hospital to a California
3 county, much less irreparable harm. As the Bankruptcy Court concluded, the
4 applicable statutes make clear that the AG has no right to review this sale nor to
5 impose conditions on the County. The AG cannot (and does not) point to any
6 statutory or regulatory authority which gives him the power to impose these 2015
7 Conditions through successor liability on the County. While the 2015 Conditions
8 purportedly are meant to further the health and safety of the communities served by
9 the Hospitals when owned by a private entity, the uncontroverted evidence indicates
10 that the AG's litigation places more of a risk on the continued viability of the
11 healthcare services provided by the Hospitals than a sale to the County does. *See*, AG
12 Appx. No. 16, at 1150, the Supplemental Smith Decl. at ¶ 14; AG Appx. No. 16, at
13 1141-42, Declaration of Paul E. Lorenz, (the "Lorenz Dec.") at ¶ 4; AG Appx. No.
14 18, at 1123, Declaration of Richard G. Adcock (the "Adcock Dec.") at ¶ 7.

15 Finally, in the context of bankruptcy, as the Bankruptcy Court held,¹² a
16 majority of courts have concluded that the explicit **statutory policy** of mootness does
17 not demonstrate irreparable injury. *See, e.g., Ohanian v. Irwin (In re Irwin)*, 338 B.R.
18 839, 853 (E.D. Cal. 2006) ("It is well settled that an appeal being rendered moot does
19 not itself constitute irreparable harm"); *In re Red Mountain Mach. Co.*, 451 B.R. 897,
20 908-09 (Bankr. D. Ariz. 2011) (internal citations omitted) ("[T]he law is clear in the
21 Ninth Circuit that irreparable injury cannot be shown solely from the possibility that
22 an appeal may be moot"). Moreover, even if the Court concluded there would be

23
24
25 statutes determine rights and liabilities, the federal common law, rather than state
26 law, is controlling" with regard to defenses such as estoppel and waiver. *Thurber v.*
27 *W. Conference of Teamsters Pension Plan*, 542 F.2d 1106, 1108 (9th Cir. 1976)
(applying federal common law to equitable estoppel).

28 ¹² *See* Debtors' Appx No. 11, at 324-333 [Bankr. Docket No. 1418, at 7].

1 irreparable harm to the AG, a stay pending appeal is not a matter of right “even if
2 irreparable injury might otherwise result.” *Nken*, 556 U.S. at 427.

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

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

9 ***(a) There Is No Measurable Detriment To The AG***

10 As the bankruptcy court found in the hospital case of *In re Gardens*, “denial
11 of a stay will most likely result in the Attorney General being unable to obtain
12 appellate review of the Court’s decision [but] [t]his injury is less severe than the
13 financial injury the Debtor would likely suffer were a stay issued.” 567 B.R. at 832.
14 Further, the communities in the County will receive greater benefit from the instant
15 sale to a public entity directly responsible to them and devoted to providing them
16 with critical healthcare than to risk losing their access to hospitals altogether in the
17 nominal pursuit of conditions meant to bind non-public purchasers. *See, infra*,
18 subsection (c).

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

21 Alarminglly, the AG glosses over any discussion of the harm to the Debtors’
22 estates and the Santa Clara County community. Such interested parties, however, will
23 all incur tremendous injury should a stay be imposed, none of which the AG squarely
24 addresses in the Motion. Similar to *In re Gardens*, “[t]he injury to the Debtor
25 resulting from issuance of a stay will be substantially greater than the injury to the
26 AG from denial of a stay. The estate is in a precarious financial position and is
27 desperately in need of the funds from the sale.” *See* 567 B.R. at 832; *see also*.
28 Issuance of a stay would most likely cause the present sale to collapse, depriving the

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1 estate of much-needed funds. AG Appx. No. 18, at 1123 (Adcock Dec., at ¶ 6)
 2 (testimony of Debtors’ CEO); *see also* Supplemental Smith Dec. at ¶¶ 16, 18 (“[A]
 3 stay would effectively terminate the [Sale] Transaction[.]”).

4 Under the Debtors’ DIP financing agreement approved by the Bankruptcy
 5 Court (“DIP Financing”), there is a finite budget for concluding the Debtors’ sale
 6 process. Debtors’ Appx. No. 17 [Bankr. Docket No. 409]. A failure to close the sale
 7 would have a major impact on the Debtors’ borrowing base under the DIP Financing.
 8 The ability to borrow against the proceeds of the sale is a critical aspect of the DIP
 9 Financing, which the Bankruptcy Court concluded was “necessary, essential and
 10 appropriate” for the reorganization. Debtors’ Appx. No. 17 [Bankr. Docket No. 409,
 11 at 15]. Without that, the Debtors ability to successfully reorganize in chapter 11 may
 12 be impossible.

13 This “threat of being driven out of business is sufficient to establish irreparable
 14 harm.” *Am. Passage Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 17 1470, 1474
 15 (9th Cir. 1985); *see also Ross-Lino Beverage Distribs., Inc. v. Coca-Cola Bottling*
 16 *Co. of N.Y., Inc.*, 749 F.2d 124, 125-26 (2d Cir. 1984) (loss of “an ongoing business
 17 [. . .] constitutes irreparable harm”). Here, the Hospitals have already lost more than
 18 100 employees between September 3 and December 28, 2018. *See* AG Appx. No.
 19 18, at 1129; Mills Dec., at ¶ 13 (testimony of the Director of Employee Services
 20 Agency for the County). There is a serious concern “that a stay of the Sale order and
 21 the resulting delay to the [timelines necessary to close the transaction on time in
 22 accordance with the APA] will cause serious uncertainty among the remaining
 23 employees of the Hospitals about the likelihood of [the County] acquiring the
 24 Hospitals.” *Id.*; AG Appx. No. 18, at 1148-1149 (Smith Dec., at ¶ 11) (“More delay
 25 . . . means that the value of the Hospitals – as functioning businesses – substantially
 26 diminishes. . . . [T]he County was only willing to pay \$235 million for functionally
 27 operating hospitals, not just for the real estate and physical structures.”).

Furthermore, the County has “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). 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). 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. AG Appx. No. 18, at 1123 (Adcock. Dec., at ¶ 7).

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

Not only will the County, along with its 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

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1 remain open and operating to ensure access to care.”); AG Appx. No. 18, at 1151-52,
2 Declaration of Sarah Cody, M.D. (“Cody Dec.”)), at ¶ 7 (testimony of County Public
3 Health Officer) (“If Saint Louise [Hospital] were to close, residents of southern Santa
4 Clara County would be forced to travel long distances to access basic hospital
5 services, and as a result, their health would be at significant risk.”). “This loss would
6 be particularly devastating to residents of southern Santa Clara County, as Saint
7 Louise Hospital is the only hospital in the region.” AG Appx. No. 18, at 1150;
8 Supplemental Smith Dec., at ¶ 14; *see also* AG Appx. No. 18, at 1141-42 (Lorenz
9 Dec., at ¶ 4 (attaching “[a] map of the region’s hospitals, to illustrate geographically
10 the impact a closure of these hospitals, particularly SLRH, would have on residents
11 of Santa Clara County and neighboring counties”); AG Appx. No. 18, at 1151-52
12 (Cody Dec., at ¶ 7) (noting Saint Louise is the only hospital in the southern portion
13 of the County).

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

19 Without addressing any of the foregoing, the only evidence the AG offers is
20 the unremarkable testimony that the 2015 Conditions address essential services.
21 Motion at 17, ll. 18-22 (citing appended Declaration of Phil Dalton at ¶ 3). Notably,
22 the AG presents **no** testimony to support the argument that the County would not
23 continue to provide such services. By contrast, the County has presented direct
24 evidence that it will continue its “longstanding commitment to providing
25 comprehensive and essential healthcare services, including 24-hour emergency and
26 trauma services, intensive care and neonatal intensive care; coronary care and stroke
27 care; cancer treatment obstetric, reproductive and other women’s health care
28 services, pediatric care; sub-acute care; diagnostic imaging services; and surgical

1 services; all in a welcoming, non-discriminatory environment,” in owning and
 2 operating the Hospitals, and has represented the same to the AG. Supplemental
 3 Smith Decl. at ¶ 9; County to AG Letter attached to Williams Decl. Accordingly, the
 4 balance of hardships is very clearly tipped against the AG.

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

6 In *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 2017 WL 8186903, at *4, the
 7 district court (in this District) held that the “Attorney General’s argument regarding
 8 what serves the public interest is dependent upon a statutory right to exercise any
 9 authority over the sale of [the debtor’s] assets.” Therefore, “in light of this dependent
 10 relationship, and in light of the Court’s conclusion that the Attorney General ha[d]
 11 not established a likelihood of success on the merits, the Court conclude[d] that it
 12 [was] highly unlikely that the public interest [would] be served by the imposition of
 13 a stay.” *Id.* Similarly, here, the Attorney General’s argument regarding what serves
 14 the public interest is dependent upon a statutory right to exercise any authority over
 15 the sale of the Hospitals to the County. Since the Attorney General does not have the
 16 statutory right to review the sale for the reasons discussed above, no public interest
 17 would be served by the imposition of a stay. Additionally, in the previous section,
 18 the Debtors showed that the public interest is not served by a stay of the Sale Order
 19 due to the potential harm to the communities in the County who would be seeking
 20 the critical healthcare the Hospitals provide and/or the stakeholders of the estate who
 21 constitute the interested “public.”

22 Moreover, “[t]here is a great public interest in the efficient administration of
 23 the bankruptcy system.” *In re Fuentes*, Case No. 2:13-bk-11518-ER, 2018 WL
 24 921966, at *3 (Bankr. C.D. Cal. Feb. 15, 2018) (quoting *Adelson v. Smith (In re*
 25 *Smith)*, 397 B.R. 134, 148 (Bankr. D. Nev. 2008)). In this case, as in *In re Gardens*,
 26 “a stay could cause the sale to collapse, seriously injuring the estate.” See 567 B.R.
 27 at 832; see also *In re Doctors Hosp. of Hyde Park, Inc.*, 376 B.R. 242, 249 (Bankr.
 28

1 N.D. Ill. 2007); *In re Metiom, Inc.*, 318 B.R. 263, 272 (S.D.N.Y. 2004) *In re Adelphia*
 2 *Commc'ns Corp.*, 368 B.R. 140, 284 (Bankr. S.D.N.Y. 2007).

3 **C. IF THIS COURT WERE TO GRANT THE STAY, THE AG SHOULD**
 4 **BE REQUIRED TO POST A BOND IN THE AMOUNT OF**
\$350,000,000.

5 Bankruptcy Rule 8007 allows the Court to condition a stay pending appeal on
 6 the filing of a bond. Fed. R. Bankr. P. 8007; *see also In re Roussos*, No. 2:15-BK-
 7 21624-ER, 2017 WL 889312, at *1 n.1 (Bankr. C.D. Cal. Mar. 6, 2017). “[T]he
 8 Court has discretion in determining the sufficiency of the supersedeas bond and the
 9 adequacy of the surety.” *In re Roussos*, No. 2:15-BK-21624-ER, 2017 WL 889312,
 10 at *1 n.1 (citing *Farmer v. Crocker Nat’l Bank (In re Swift Aire Lines, Inc.)*, 21 B.R.
 11 12, 14 (B.A.P. 9th Cir. 1982). A bond is necessary where the stay is “likely to cause
 12 harm by diminishing the value of an estate or endanger [the non-moving parties’]
 13 interest in the ultimate recovery [...]” *In re Adelphia Commc’s Corp.*, 361 B.R. at
 14 368. Here, any stay would, among other risks, put the pending sale at risk, thereby
 15 putting the Debtors’ businesses at risk of loss of funding and liquidation, and its
 16 patients at risk, and impose added expenses of administering the Chapter 11 Cases,
 17 and would diminish creditor recoveries. Accordingly, if the Court were to grant a
 18 stay, the Court should require the AG to post a bond in the amount of \$350 million,
 19 and in no event less than \$235 million. *See, e.g., Cotton ex rel. McClure v. City of*
 20 *Eureka, Cal.*, 860 F. Supp. 2d 999, 1029 (N.D. Cal. 2012).

21 **V. CONCLUSION**

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

23 Dated: February 13, 2019

DENTONS US LLP
 SAMUEL R. MAIZEL
 TANIA M. MOYRON

26 By /s/ Tania M. Moyron
 27 Tania M. Moyron

28 Attorneys for the Chapter 11 Debtors
 and Debtors In Possession

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017-5704.

I hereby certify that on February 13, 2019, I electronically filed the document(s) described as:

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]

with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the registered CM/ECF users.

I hereby certify that true copies of the documents described above have been served on the interested parties in this action who are not registered CM/ECF users to receive notice from the Clerk of the Court as follows:

See attached Service List

☒ **(VIA FEDERAL EXPRESS)** I deposited in a box or other facility maintained by Federal Express, an express carrier service, or delivered to a courier or driver authorized by said express carrier service to receive documents, a true copy of the foregoing document, in an envelope designated by said express service carrier, with delivery fees paid or provided for.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 13, 2019, at Los Angeles, California.

/s/Chris O'Meara
Chris O'Meara

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

8
 9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION - LOS ANGELES

11 In re:
 12 Verity Health System Of California, Inc.,
 13 et al.,

14 Debtors and Debtors In
 Possession.

15 Xavier Becerra,
 16 Appellant.

17 v.

19 Verity Health System of California, Inc.,
 20 et al.,
 Appellee.

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**

22
 23 ¹ The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-
 24 bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-
 25 bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-
 26 bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-
 27 20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical
 28 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.

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

2 1. I am the Chief Executive Officer of Verity Health System of
3 California, Inc. ("VHS"). I became the Chief Executive Officer effective January
4 2018. Prior thereto, I served as VHS's Chief Operating Officer since August 2017.

5 2. I have extensive senior-level experience in the not-for-profit healthcare
6 arena, especially in the areas of healthcare delivery, hospital acute care services,
7 health plan management, product management, acquisitions, integrations,
8 population health management, budgeting, disease management and medical
9 devices. I have meaningful experience in both the technology and healthcare
10 industries in the areas of product development, business development, mergers and
11 acquisitions, marketing, financing, strategic and tactical planning, human resources,
12 and engineering.

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

22 4. Except as otherwise indicated herein, this Declaration is based upon
23 my personal knowledge, my review of relevant documents, information provided to
24 me by employees of the Debtors and Cain Brothers, the Debtors' investment
25 bankers, and the Debtors' legal and financial advisors, or my opinion based upon
26 my experience, knowledge, and information concerning the Debtors' operations and
27
28

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

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

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

19 7. The Debtors have also taken numerous actions and expended
20 significant resources in reliance on the Sale Order on both the labor and operational
21 side. Since The Bankruptcy Court entered the Sale Order, more than 100
22 employees of VHS, O'Connor, Saint Louise, Berkeley Research Group ("BRG")
23 and Dentons US LLP ("Dentons") have been working with representatives of the
24 County on transfer of the Hospitals' operations. Numerous other third parties,
25 perhaps with equal or a greater number of employees, were also engaged to provide
26 support, counsel, and labor to make this transition happen. These include but are
27 not exclusive of public relations consultants, and outside legal counsel Nelson
28

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.

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

11 **Corporate Communication Affairs, and Marketing:** A
12 substantial amount of time is being spent on communications
13 and public relations, including meetings with public relations
14 advisors; meeting with the County on transition marketing;
15 gathering and documenting all existing materials on O'Connor
16 and Saint Louise; creating FAQs about the Hospitals;
17 conducting a meeting between directors and managers of
18 O'Connor and Saint Louise with representatives of the County
19 on personnel issues; conducting "question and answer" sessions
20 for the Medical Staff and County Executives; conducting
21 meetings by and between the County and the Hospitals'
22 Cardiovascular Services Physicians, Family Medicine
23 Physicians and Orthopedic Physicians; creating documents
24 pertaining to the post-sale marketing of O'Connor and Saint
25 Louise; meeting with employees of O'Connor and/or Saint
26 Louise on the upcoming transfer; photographing and
27 documenting all signage with current O'Connor and Saint
28 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:

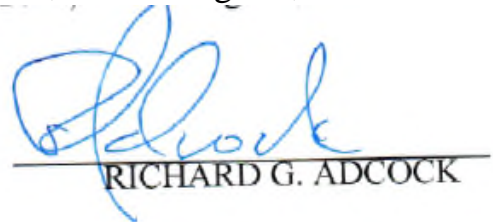
Our legal counsel, both in-house and Dentons, have been preparing extensive legal documents in connection with the transition. The work encompasses diligent legal research, preparation of pleadings and massive number of telephonic/electronic and in person meetings.

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.


RICHARD G. ADCOCK

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

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

11 In re:
 12 Verity Health System Of California, Inc.,
 13 *et al.*¹

14 Debtors and Debtors In
 Possession.

15 Xavier Becerra,
 16 Appellant.

17 v.

18
 19 Verity Health System of California, Inc.,
 20 *et al.*,
 Appellee.

District Court Case Number:
 2:19-cv-00133-DMG

Bankruptcy Court Case Number:
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Adversary Case Number: NA

**DECLARATION OF JOHN P.
 MILLS IN OPPOSITION TO THE
 CALIFORNIA ATTORNEY
 GENERAL'S MOTION FOR STAY
 PENDING APPEAL**

21
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 23 ¹ The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-
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 and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

DECLARATION OF JOHN P. MILLS

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

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

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

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

21 5. Following entry of the Sale Order, SCC ESA staff organized and held “Information
22 and Employment Fairs” at O’Connor Hospital and St. Louise Regional Hospital (collectively, the
23 “Hospitals”). A true and correct copy of SCC ESA’s informational flyer for the Information and
24 Employment Fairs is attached hereto as Exhibit A. The County’s Information and Employment
25 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,
26 2019. See Exhibit A.

27 6. Following entry of the Sale Order, SCC ESA staff have worked approximately one
28 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

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

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

9 8. Following entry of the Sale Order, SCC has received from employees of the Hospitals
10 two thousand and sixty-four (2,064) applications for SCC employment, which would be effective as
11 of the closing of the transaction. SCC ESA staff have worked one thousand eight hundred and ten
12 (1,810) total hours reviewing and processing these applications.

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

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

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

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

27 13. At my direction and in reliance on the Sale Order, SCC ESA has established the
28 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

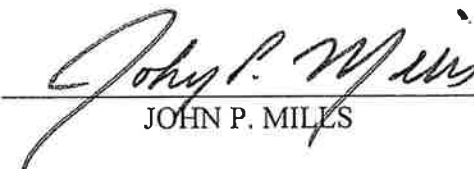
1 are planning to perform the internal processes necessary to complete the
 2 hiring process by February 28, 2019 for successful applicants currently
 3 employed at the Hospitals who accept SCC offers of employment.
 4 Onboarding includes preparing electronic personnel records, obtaining
 5 background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

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

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

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

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

23
 24
 25 
 26 JOHN P. MILLS
 27
 28

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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:
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Xavier Becerra,
Appellant.

v.

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District Court Case Number:
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**DECLARATION OF JAMES R.
WILLIAMS IN OPPOSITION TO
THE CALIFORNIA ATTORNEY
GENERAL'S MOTION FOR STAY
PENDING APPEAL**

¹ The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv-20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

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

Office of the County Counsel

County Government Center, East Wing
70 West Hedding Street, 9th Floor
San Jose, California 95110
(408) 299-5900
james.williams@cco.sccgov.org



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 Health 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.

Letter to Honorable Xavier Beccera

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

Page 2 of 2

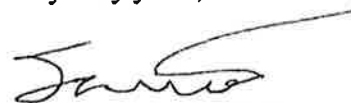
However, after notifying your Office of the County's intent to purchase these hospitals, the County has been consistently forthright that it cannot do so if all of the conditions imposed on Verity are imposed on the County. As you recognized in your November 9, 2018 clarification letter to the County, 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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 5 Facsimile: (213) 623-9924

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

8
 9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
 10 **WESTERN DIVISION - LOS ANGELES**

11 In re:
 12 Verity Health System Of California, Inc.,
 13 et al.,

14 Debtors and Debtors In
 Possession.

15 Xavier Becerra,
 16 Appellant.

17 v.

18
 19 Verity Health System of California, Inc.,
 20 et al.,
 Appellee.

District Court Case Number:
 2:19-cv-00133-DMG

Bankruptcy Court Case Number:
 2:18-bk-20151-ER

Adversary Case Number: NA

**DECLARATION OF PAUL E.
 LORENZ IN OPPOSITION TO THE
 CALIFORNIA ATTORNEY
 GENERAL'S MOTION FOR STAY
 PENDING APPEAL**

21
 22
 23 ¹ The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-
 24 bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-
 25 bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-
 26 bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-
 27 20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical
 28 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-
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 and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

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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

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

9 5. As Chief Executive Officer of SCVMC, I have been heavily involved in the work
10 needed to transition ownership of OCH and SLRH to the County. These efforts include
11 onboarding more than 1,400 OCH and SLRH employees (for employment effective as of the
12 closing of the transaction), credentialing and onboarding more than 800 physicians, and taking
13 appropriate actions to ensure that the necessary equipment, supplies, services and staff are in place
14 so there is no disruption to patient care at these facilities. In connection with such work, I directed
15 SCVMC staff to take numerous actions and expend significant resources in reliance on the United
16 States Bankruptcy Court, Central District of California – Los Angeles Division's December 27,
17 2018 "Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County
18 Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the
19 Assumption and Assignment of an Unexpired Leave Related Thereto; and (C) Granting Related
20 Relief" ("Sale Order"). Some of these efforts are described below.

21 6. Over the past few weeks, in reliance on the Sale Order, I, along with the SCVMC
22 Chief Medical Officer, and other SCVMC medical executive leaders, have attended at least 30
23 meetings with various physician leaders at OCH and SLRH to discuss the County's intent to
24 continue or expand services at OCH and SLRH, including assuming and augmenting physician
25 contracts; adding call coverage; providing for additional administrative and professional services;
26 increasing coverage for uninsured and underinsured patients; and providing training and support
27 for the County's implementation of an electronic health record at the facilities. These meetings
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1 included physician leadership for the service lines of 24-hour emergency and trauma service;
2 intensive care and neonatal intensive care; cardiovascular and coronary care; thoracic surgery;
3 cancer care; radiation oncology; gastroenterology; obstetrics, pediatrics; orthopedics; bariatric
4 care; urology; general medicine; neurosurgery; diagnostic imaging and radiology; pathology
5 services; surgical services; anesthesia; and clinical services. There are also additional meetings
6 scheduled with family medicine, anesthesia, pediatrics and internal medicine physicians in the
7 upcoming weeks prior to closing.

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

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

21 9. Pursuant to state and federal law, a physician must be credentialed and privileged
22 as a member of a hospital's medical staff before that physician can admit and treat patients at that
23 hospital. The credentialing and privileging process is time and labor intensive and requires a
24 thorough review and verification of a physician's qualifications, education, training, experience,
25 and licensure to provide the requested services. There are approximately 627 physicians on the
26 OCH medical staff and approximately 218 physicians on the SLRH medical staff. As a
27 requirement to operate a consolidated license, SCVMC must have a single consolidated medical
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1 staff approved by the County Board of Supervisors (SCVMC's Governing Body), which means
2 that all of the physicians currently on the medical staffs of OCH and SLRH must be credentialed
3 and privileged by the SCVMC medical staff. In reliance on the Sale Order, SCVMC prepared
4 and issued an application form and communication to all OCH and SLRH physicians advising
5 them of the need to apply to SCVMC medical staff in order to continue treating their patients at
6 the hospitals once there is a transfer of ownership to the County. To date, more than 95 percent of
7 the physicians have submitted their applications to become members of the SCVMC medical staff.
8 Over the next few weeks, SCVMC will expend significant staff and financial resources to review
9 and process these applications and onboard the physicians to the SCVMC medical staff, including
10 a review of their credentials, education, licensing and other matters, and submission to the County
11 Board of Supervisors (SCVMC's Governing Body) for approval. All of these actions must be
12 completed no later than February 28, 2019, the date that, under the terms of the APA, the closing
13 of the transaction must occur. If the Court were to issue a stay, SCVMC would cease to process
14 these hundreds of applications and onboard physicians in order for the County to operate the
15 hospitals. A failure by SCVMC to process these applications and credential the physicians in a
16 timely manner will result in the physicians being unable to admit and care for their patients at
17 OCH and SLRH, which will significantly harm the County's ability to operate these hospitals
18 following acquisition.

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

23 11. SCVMC has also expended, and continues to expend, significant resources
24 following the Sale Order to negotiate contracts for equipment, supplies, and services. For
25 example, in reliance on the Sale Order, the County paid more than \$114,000 as a non-refundable
26 payment to a vendor in order to secure a contract for a necessary supply chain materials
27 management system to be in place for the County to operate at OCH and SLRH upon closing.
28

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

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

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

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11 PAUL E. LORENZ
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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.

Xavier Becerra,
Appellant.

v.

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

District Court Case Number:
2:19-cv-00133-DMG

Bankruptcy Court Case Number:
2:18-bk-20151-ER

Adversary Case Number: NA

**DECLARATION OF SARA H.
CODY IN OPPOSITION TO THE
CALIFORNIA ATTORNEY
GENERAL'S MOTION FOR STAY
PENDING APPEAL**

¹ The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv-20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

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DECLARATION OF SARA CODY, M.D.

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

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

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

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

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

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

23 7. The southern portion of Santa Clara County, where Saint Louise Regional Hospital
24 ("Saint Louise") is the only hospital, is disproportionately low income, uninsured, and under
25 insured when compared to the rest of our County. If Saint Louise were to close, residents of
26 southern Santa Clara County would be forced to travel long distances to access basic hospital
27 services, and as a result, their health would be at significant risk. If adults and children with
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1 urgent medical needs from those communities were required to travel north to the City of San José
2 or south to the City of Salinas to obtain the care they currently receive at Saint Louise, their lives
3 could be endangered and their health could be at risk.

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

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

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

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

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

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

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

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

6
7
8 
SARA H. CODY, M.D.

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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.,
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Debtors and Debtors In
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Xavier Becerra,
Appellant.

v.

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

District Court Case Number:
2:19-cv-00133-DMG

Bankruptcy Court Case Number:
2:18-bk-20151-ER

Adversary Case Number: NA

**DECLARATION OF JEFFREY
SMITH, M.D., J.D. IN OPPOSITION
TO THE CALIFORNIA ATTORNEY
GENERAL'S MOTION FOR STAY
PENDING APPEAL**

¹ The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv-20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

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

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

3
4 **The County's Historical Concern with the Continued Viability of O'Connor and Saint Louise**

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

10 7. It was for these reasons that back in 2015 I strongly supported, and even advocated
11 to the Attorney General's Office at that time, that Attorney General Kamala Harris should exercise
12 her authority under California's charitable trusts statutes to impose reasonable conditions on a
13 private purchaser of the former Daughters of Charity health system, with the goal to support
14 continued health care access for our community and to ensure that the fiscal health of our County
15 public hospital system would not be compromised. It appears that Attorney General Harris agreed
16 with my suggestions back in 2015, and as a result, added conditions to the transaction in 2015 (the
17 "2015 Conditions") that would better ensure that health care access would be maintained in the
18 County after the Daughters of Charity changed ownership of O'Connor and Saint Louise to Verity
19 Health System ("Verity"), a private entity that was financially connected to an out-of-state hedge
20 fund.

21
22 **The Attorney General Erroneously Asserts That the County has Refused to Commit to Provide Essential Healthcare Services; Just the Opposite is True.**

23 8. In the Attorney General's Emergency Stay Motion (in particular, at page 9 of 29),
24 the Attorney General asserts that he needs an emergency stay because of the County's alleged
25 "refusal to commit to [provide] these essential healthcare services" after the sale of O'Connor and
26 Saint Louise to the County. That assertion, regarding the County's alleged "refusal to commit," is
27 demonstrably incorrect. Indeed, in the past four months, I have met with the Attorney General of
28

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

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

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

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

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

19 13. However, despite our lengthy travel in inclement weather to the Attorney General's
20 Sacramento headquarters on January 15, 2018, for a discussion about the County's proposal, the
21 meeting with the Attorney General's senior leadership lasted for approximately five minutes. The
22 Attorney General's representatives summarily refused to enter into such a legally enforceable
23 arrangement with the County. It is therefore incorrect for the Attorney General to assert in his
24 Emergency Motion that the County has refused to commit to providing essential healthcare
25 services at O'Connor and Saint Louise after the sale, and it is also incorrect that imposition of the
26 2015 Conditions – drafted for a private out-of-state hedge fund – is the only means to ensure a
27 County commitment.
28

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

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

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

20
21 **Issuance of a Stay Would Also Undermine the Benefit of the Bargain to the County,
and to the Broader Public the County Serves**

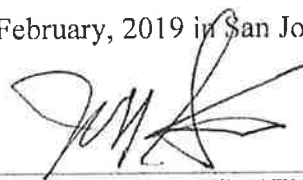
22 19. A stay would also effectively terminate the County's Transaction to buy the Assets
23 because the uncertainty and delay regarding the County's acquisition of the hospitals would likely
24 result in many current hospital staff leaving their jobs and seeking employment elsewhere. If that
25 were to occur, the Transaction would no longer deliver functioning hospitals to the County, for
26 which the County is paying a premium far beyond what it would have paid for nonoperating
27 hospital facilities. Indeed, according to my staff's analysis that is described in John Mills's
28

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

8
9 **A Stay of the Sale Order Would Ultimately Mean a Loss of Health Care Access**

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

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

22
23 

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