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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

**In re Verity Health System of  
California, Inc.**

Debtors

DISTRICT COURT CASE NUMBER:  
2:19-cv-133-RGK

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

**XAVIER BECERRA, California  
Attorney General,**

Appellant,

**REPLY TO THE OPPOSITIONS OF  
DEBTORS, THE OFFICIAL CREDITOR'S  
COMMITTEE, AND THE COUNTY OF  
SANTA CLARA [RELATED DOCKET  
NOS. 6, 15, 17, 18, 20]**

v.

**VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., THE  
OFFICIAL CREDITOR'S  
COMMITTEE, COUNTY OF  
SANTA CLARA,**

Appellees.

Date: February 22, 2019  
Time: 9:30 a.m.  
Courtroom: 850  
Judge: R. Gary Klausner

United States Courthouse:  
255 East Temple Street,  
Los Angeles, CA 90012,  
Courtroom 850, 8th Floor



# TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
ARGUMENT.....	4
I.    The California Attorney General is Likely to Succeed on the Merits of the Appeal .....	4
A.    The California Attorney General’s Conditions Were Issued Through State Statutes and Regulations .....	4
B.    The Attorney General Did Not Waive His Objections .....	6
C.    There Was No Intent, Reliance, or Injury Necessary for the Application of Equitable Estoppel.....	7
II.    The People that the California Attorney General Represents Will Suffer Irreparable Harm Absent a Stay .....	8
III.   There Will Be Less Harm to Other Interested Parties if a Stay is Granted.....	9
IV.   The Public Interest Is Served by Ensuring that the County Abide by the Clinical Conditions .....	10
CONCLUSION .....	11

# TABLE OF AUTHORITIES

Page

## CASES

<i>Gabriel v. Alaska Elec. Pension Fund</i> 773 F.3d 945 (9th Cir. 2014).....	7
<i>Holt v. College of Osteopathic Physicians and Surgeons</i> (1964) 61 Cal.2d 750. Case.....	10
<i>In re Oyster Bay Cove, Ltd.</i> 196 B.R. 251 (1996).....	5
<i>In re Paloma Generating, Co.</i> 2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017).....	6
<i>In re Tougher Industries, Inc.</i> 2013 WL 1276501 (Bankr. N.D.N.Y. March 27, 2013).....	6
<i>In re Ventura</i> (1963) 217 Cal.App.2d 50.....	10
<i>In re Veteran's Industries, Inc. of Long Beach v. Thomas C. Lynch</i> (1970) 8 Cal.App.3d 902.....	10
<i>In re Zahn</i> (1971) 16 Cal.App.3d 106.....	10
<i>Intel Corp. v. Hartford Acc. &amp; Indem. Co.</i> 952 F.2d 1551,1559 (9th Cir. 1991).....	6
<i>Midlantic National Bank v. New Jersey Department of Environmental Protection</i> 474 U.S. 494 (1986) .....	4
<i>Myers v. United States</i> 297 B.R. 774 (S.D. Cal. 2003) .....	4
<i>People v. Whaley</i> (2008) 160 Cal.App.4th 779.....	4

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<i>Phelps v. Stostad</i>	
(1997) 16 Cal.4th 23 .....	4
<i>Salyers v. Metro Life Ins. Co.</i>	
871 F.3d 934 (9th Cir. 2017) .....	6
 <b>STATUTES</b>	
11 United States Code	
§ 363(d)(1) .....	4
§ 541(f) .....	4
Bankruptcy Code in the Bankruptcy Abuse Prevention and Consumer	
Protection Act of 2005 Amendments .....	5
Bankruptcy Code	
§ 959(b) .....	5
California Corporate Code	
§ 5914. ....	1, 5
§ 5914-5917 .....	2, 10
§ 5919, subd. (a) .....	1
§ 5920-5923 .....	2, 10
§ 5926 .....	5
2017 California Legislative Service Chapter 782 .....	1



1 The California Attorney General files this reply to the oppositions filed by the  
2 Debtors, the Official Creditors' Committee, and the County of Santa Clara  
3 ("County") to the California Attorney General's Motion for Stay pending appeal  
4 [Dkt Nos 6, 15, 16, 17, 18, and 20 respectively], and respectfully states as follows:

### 5 INTRODUCTION

6 The Debtors own the hospitals in question because the California Attorney  
7 General gave consent pursuant to his statutory authority under Corporations Code  
8 section 5914, et seq. State law gives the Attorney General sole discretion to  
9 consent to a change of ownership or control, and to ensure the health and safety of  
10 the surrounding communities by requiring continued healthcare services. After  
11 careful deliberation, consultation with his healthcare expert,<sup>1</sup> and consideration of  
12 public testimony, the California Attorney General issued a decision to consent with  
13 conditions ("AG Conditions") to the change in governance and control of  
14 Daughters of Charity Health System (now Verity Health Systems of California,  
15 Inc.). (*Ibid.*) The decision contained conditions for each of the hospitals, and the  
16 transaction closed December 14, 2015. (Appendix, Doc. 1 [AG Conditions].)

17 The health and safety protections within the AG Conditions clearly state that  
18 they are applicable to the County, as the successor in interest. As recently as 2017,  
19 the Legislature made clear that the Attorney General's authority to enforce  
20 conditions applies even when a hospital is no longer in operation. (2017 Cal. Legis.

21  
22 <sup>1</sup> An independent healthcare consultant retained by the Attorney General  
23 pursuant to Corporations Code section 5919, subdivision (a) conducts a detailed  
24 analysis of the possible effects on the community, including conducting interviews  
25 with constituencies in the community, an analysis of financial, utilization, and  
26 service information provided by the Applicant and the California Office of  
27 Statewide Health Planning and Development (OSHPD), an analysis of publicly  
28 available data and reports regarding the health facility's service area  
including: demographic characteristics and trends; payer mix; hospital utilization  
rates and trends; health status indicators; and market share. From that analysis, the  
consultant prepares the impact statement and makes recommendations for  
conditions to reduce or eliminate any significant adverse effect from the  
transaction. The conditions imposed by the Attorney General rely heavily on the  
expert consultant's recommendations.

1 Serv. Ch. 782 (A.B. 651) (WEST) [amended Cal. Corp. Code, §§ 5914-5917, 5920-  
2 5923, and added§ 5926].)

3 The AG Conditions require that the hospitals, regardless of successive  
4 ownership, continue to provide important healthcare services for at least ten years  
5 from the closing date of the transaction, including:

- 6 • 24-hour emergency medical services, including a minimum number of  
7 emergency treatment stations;
- 8 • Intensive care services;
- 9 • Coronary care services;
- 10 • Obstetric services;
- 11 • Sub-acute care services;
- 12 • Women's health services, including mammography, pregnancy and  
13 delivery services, maternal fetal medicine, stereotactic breast biopsy, and  
14 bone density screening;
- 15 • Reproductive health services, and expand such services to include those  
16 prohibited by the "Ethical and Religious Directives for Catholic Health  
17 Care Services" as determined by the United States Conference of Catholic  
18 Bishops; and
- 19 • Stroke services including telemedicine program for stroke patients and  
20 designation as a Primary Stroke Center;

21 And the following services for a period of five years:

- 22 • Cancer services including medical, surgical, radiation therapy, and the  
23 Ambulatory Infusion Center for a period of five years;
- 24 • Cardiac services, including the two cardiac catheterizations and designation  
25 as a STEMI Receiving Center for a period of five years;
- 26 • Neonatal intensive care services;
- 27 • Orthopedics and joint replacement services; and
- 28 • Pediatric services;

(Appendix, Doc. 1 [AG Conditions], at 181-182, 267).

These hospitals provide essential services to the uninsured, under-served  
populations, and the elderly. (Appendix, Doc. 5 [O'Connor Healthcare Impact



1 Report] p. 715; Doc. 5 [Saint Louise Healthcare Impact Report] p. 811.) Given his  
2 obligation under state law to consider the accessibility of important health care  
3 services, the California Attorney General required these services continue to be  
4 provided for a term of years, even if the hospitals were later transferred. Appellees  
5 provide no authority that the bankruptcy law preempts a state statute designed to  
6 protect the public health and safety.

7 Without the AG Conditions, the County will not be required to continue to  
8 operate O'Connor or Saint Louise as general acute care hospitals, or provide the  
9 specific healthcare services the AG Conditions require. The Asset Purchase  
10 Agreement does not set forth any specific clinical services. The County has not  
11 committed to providing any of the services enumerated in the health and safety  
12 protections within the AG Conditions. Appellees have not identified any document  
13 that sets forth any specific medical service that it will guarantee. The Asset  
14 Purchase Agreement only states that it will provide services "consistent with the  
15 objectives of the current conditions of approval from the California Attorney  
16 General." (Appendix, Doc 2, [Asset Purchase Agreement], Section 13.3, p. 557.)  
17 Of course, this vague statement of intent does not bind the County to actually  
18 provide any of the clinical services required by the AG Conditions. Appellees'  
19 opposition does not set forth any document or declaration under penalty of perjury  
20 that the services will be continued.

21 Appellees want it both ways. They claim the Conditions need not apply  
22 because the County is a public entity that is required to provide health services. But  
23 Appellees also claim the sale will be jeopardized if the services required by the  
24 Conditions should apply. Appellees never identify which, if any, of the healthcare  
25 services it cannot maintain. Appellees ask the Court to trust that the County will  
26 provide all health services even though it refuses to commit to any of the health or  
27 safety conditions required pursuant to state law. Without the AG Conditions, the  
28 County is not required to maintain the properties as acute care hospitals with the

1 required healthcare services, and can use them for any other purpose. Therefore, a  
2 stay is essential.

### 3 ARGUMENT

#### 4 I. THE CALIFORNIA ATTORNEY GENERAL IS LIKELY TO SUCCEED ON THE 5 MERITS OF THE APPEAL

##### 6 A. The California Attorney General's Conditions Were Issued 7 Through State Statutes and Regulations

8 Sales of nonprofit debtor corporation's assets are subject to applicable state  
9 law. See 11 U.S.C. §363(d)(1) and § 541(f). Section 541(f) states:

10 Notwithstanding any other provision of this title, property that is held  
11 by a debtor that is a corporation described in section 501(c)(3) of the  
12 Internal Revenue Code of 1986 and exempt from tax under section  
13 501(a) of such Code may be transferred to an entity that is not such a  
14 corporation, but only under the same conditions as would apply if the  
15 debtor had not filed a case under this title.

16 Furthermore, the Bankruptcy Act does not preempt "a state statute or  
17 regulation that is reasonably designed to protect the public health or safety. . ."  
18 *Midlantic National Bank v. New Jersey Department of Environmental Protection*,  
19 474 U.S. 494, 507 (1986). Appellees cite to inapplicable cases dealing with  
20 unsecured creditors who wait until after a sale to sue the buyers. *See Myers v.*  
21 *United States*, 297 B.R. 774, 784 (S.D. Cal. 2003). They further ignore language in  
22 *Myers* acknowledging that federal preemption is only likely where a state statute  
23 purposefully carves an exception to the Bankruptcy Code or where a state statute is  
24 more concerned with economic regulation rather than with protecting the public  
25 health and safety. *Id.*, citing *Baker & Drake, Inc. v. Public Serv. Comm. of Nevada*,  
26 35 F.3d 1348, 1353 (9th Cir. 1994). Neither factor is present here.

27 On review, the court must consider the statutory language in the context of the  
28 entire statute and the statutory scheme of which it is a part. *Phelps v. Stostad*  
(1997) 16 Cal.4th 23, 32. Moreover, the various parts of a statutory enactment  
must be harmonized by considering the particular clause or section in the context of  
the statutory framework as a whole. *People v. Whaley* (2008) 160 Cal.App.4th 779.



1 Here the various sections of the Corporations Code giving the Attorney General  
2 authority to review sales of nonprofit hospitals must be harmonized.

3 California Attorney General Harris exercised her police and regulatory powers  
4 under Corporations Code section 5914 et seq. in December 2015 when she issued a  
5 decision to consent with conditions to the change in governance and control of  
6 Verity and its affiliated entities. The terms of the AG Conditions were to remain in  
7 place for 15 years – and explicitly apply to future owners, without limitation.  
8 (Appendix, Doc 1 [AG Conditions], p. 181 and 266.) State law allows the Attorney  
9 General to enforce the health and safety protections within his conditions to the  
10 fullest extent provided by law. (Cal. Corp. Code, § 5926.) As such, the continued  
11 operation of the AG Conditions is a continuation of the California Attorney  
12 General's police and regulatory powers – akin to conditions that run with the land.

13 The Bankruptcy Court was required to apply non-bankruptcy law under  
14 Bankruptcy Code sections 959(b) and the amendments to the Bankruptcy Code in  
15 the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 of sections  
16 363(d)(1), 541(f), 1129(a)(16), and 1221(d) that specifically provide that applicable  
17 non-bankruptcy law applies to sales of assets by a nonprofit debtor.

18 Conclusions of law are reviewed de novo. (*In re Oyster Bay Cove, Ltd.* 196  
19 B.R. 251, 254 (1996). Here, the court abused its discretion by finding that state law  
20 did not apply to this sale transaction. A bankruptcy court's order authorizing a sale  
21 of property "free and clear" of all liens has no impact on restrictions that run with  
22 the land. (*Id.* at p. 255.) A sale of land 'free and clear' from these 'interests,' are  
23 not intended to sever non-monetary property interests that are created by  
24 substantive State law." (*Ibid.*)

25 Here, the health and safety protections were issued by the state Attorney  
26 General pursuant to state law and remain applicable to future owners for a period of  
27 fifteen years. These health and safety protections are non-monetary interests and  
28 more analogous to *In re Oyster Bay*, than the cases cited by Debtors. The cases

1 cited by Debtors dealt with such “interests” as a required payment of \$63 million  
2 for prior emissions under a cap and trade statute (*In re Paloma Generating, Co.*,  
3 2017 WL 5197116, (Bankr. D. Del. Nov. 9, 2017), and the calculation of  
4 unemployment insurance tax liabilities (*In re Tougher Industries, Inc.*, 2013 WL  
5 1276501 (Bankr. N.D.N.Y. March 27, 2013). In the current case, the health and  
6 safety protections within the AG Conditions are not reducible to a money  
7 satisfaction, and restrict the use of the property for the protection of the public.

8 **B. The Attorney General Did Not Waive His Objections**

9 “Waiver...occurs when a ‘party’s acts are so inconsistent with an intent to  
10 enforce the right as to induce a reasonable belief that such right has been  
11 relinquished.’” *Salyers v. Metro Life Ins. Co.* 871 F.3d 934, 938 (9th Cir. 2017).

12 Under California law, waiver is a question of fact. Waiver is an affirmative  
13 defense, for which the party asserting it bears the burden of proof. *Intel Corp. v.*  
14 *Hartford Acc. & Indem. Co.* 952 F.2d 1551,1559 (9th Cir. 1991). Here, neither  
15 Debtors nor the County can meet the burden of proof.

16 The California Attorney General has not changed his position throughout this  
17 bankruptcy action - any sale of O’Connor Hospital and Saint Louise Regional  
18 Hospital to the County is subject to the AG Conditions. (Appendix, Doc. 3 [AG  
19 Bid Procedure Response], Doc 5 [AG Bid Procedure Sur-Reply].)

20 Assistant County Counsel was advised just prior to the filing of the AG  
21 Response on December 14 that the Attorney General did not object to the sale as  
22 long as the conditions as currently or subsequently clarified remained in place.  
23 (Appendix, Doc 11 [Declaration of Angela Sierra], p. 939-940.) The intent of the  
24 Attorney General was clear, and any argument that the Attorney General intended  
25 to waive his objections is without merit. In this case, Debtors submitted a proposed  
26 transaction to the California Attorney General in 2015, and thereafter implicitly and  
27 explicitly agreed that the AG Conditions would bind successors, and further waived  
28 any right to seek judicial relief with respect to each and every Condition.



(Appendix, Doc. 1 [AG Conditions], at 180, 190, 265, 276.)

Condition I, applicable to both O'Connor Hospital and Saint Louise Regional Hospital, provides that the conditions shall be legally binding on "any successor in interest" and "any and all current and future owners, lessees and owners of the real property on which the hospital is located." (*Id.*)

Moreover, Debtors further waived any right to seek judicial relief from each and every Condition. O'Connor Hospital's Condition XXI and Saint Louise Regional Hospital's Condition XXII state in relevant part: "[A]ll parties listed in Condition I...are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition."

(Appendix, Doc. 1 [AG Conditions], at 190, 276.) Verity is expressly bound by the AG Conditions, and waived all rights to judicial relief with respect to the conditions. (*Id.*) As such, the only party that has waived any rights is the Debtors.

**C. There Was No Intent, Reliance, or Injury Necessary for the Application of Equitable Estoppel**

The doctrine of equitable estoppel requires: 1.) the party to be estopped must know the facts, 2.) he must intend that his conduct shall be acted on, 2.) the party asserting the right to estoppel must be ignorant of the true facts, and 4.) the party asserting estoppel must act in reliance and to his injury. *Gabriel v. Alaska Elec. Pension Fund* 773 F.3d 945, 955 (9th Cir. 2014).

Neither the County nor the Debtors have met the requirements for invoking the doctrine. The Attorney General informed the County that the AG Response was not a waiver of AG Conditions, thus there was no showing that the California Attorney General intended his December 14th filing be interpreted as a relinquishment of his rights. (Appendix, Doc 11 [Declaration of Angela Sierra], 939-940.)

Before the California Attorney General filed his AG Response on December



1 14, the County was advised that the Attorney General did not object to the sale as  
2 long as the conditions as currently or subsequently clarified remained in place.  
3 (Appendix, Doc 11 [Declaration of Angela Sierra], pp. 940.) The County “agreed  
4 to discuss, post-sale, how to address the other conditions” and that “ongoing  
5 discussions with the County about the other conditions were contemplated outside  
6 the Court process.” (Appendix, Doc 12 [Declaration of Assistant County Counsel  
7 Douglas Press] p. 946.) As such, the County was in no way ignorant of the  
8 Attorney General’s position.

9 Lastly, the County suffered no injury based on the AG Response filed  
10 December 14. There is no merit to the suggestion by the County that it would have  
11 “argued more strenuously” had they known of the California Attorney General’s  
12 position. The County was aware of the California Attorney General’s position, and  
13 their representatives argued their position strenuously. The Debtors provide no  
14 detail how they would have argued differently, and cite no legal authority that this  
15 is the kind of “injury” cognizable as estoppel against a public agency.

16 Because the County was aware that the California Attorney General was not  
17 waiving his AG Conditions, there was no reliance and no showing of injury to  
18 support the application of the equitable estoppel doctrine.

19 **II. THE PEOPLE THAT THE CALIFORNIA ATTORNEY GENERAL REPRESENTS**  
20 **WILL SUFFER IRREPARABLE HARM ABSENT A STAY**

21 O’Connor Hospital is a critically important provider of healthcare services to  
22 the local community and is “known for providing essential services to the  
23 uninsured, under-served populations, and the elderly,” while Saint Louise Regional  
24 Hospital is “known for providing essential services to the uninsured and under-  
25 served populations.” (Appendix, Doc 5 [O’Connor Healthcare Impact Report] p.  
26 715; [Saint Louise Healthcare Impact Report] p. 811.) The California Attorney  
27 General’s expert further noted that “[t]he Hospital’s emergency and obstetrics  
28 services are very important for patient access, and play an important role in

1 preserving the safety net. (*Id.*) The services noted as especially important to the  
2 local community were the basis for the both O'Connor and Saint Louise's AG  
3 Conditions IV and V that required such services continue to be provided into the  
4 future. Appellees fail to contradict any evidence that these services are essential to  
5 the surrounding communities. And the County refuses to commit to providing any  
6 of them. The California Attorney General seeks to protect these vital services by  
7 seeking enforcement of his AG Conditions on appeal. The harm that would befall  
8 the community should the County fail to provide the essential services required by  
9 the AG Conditions is immeasurable.

10 **III. THERE WILL BE LESS HARM TO OTHER INTERESTED PARTIES IF A**  
11 **STAY IS GRANTED**

12 Debtors have provided declarations from Richard Adcock, John Mills, James  
13 Williams, and Paul Lorenz in support of their argument that Debtors and the  
14 County will be harmed by a brief stay of the Sale Order pending appeal. Mr.  
15 Adcock opines that if a stay is granted that the sale will be in danger of collapsing.  
16 (Adcock declaration, p. 3 [Dkt No. 15-1.]) However, this is merely speculative, as  
17 the County has not provided such a declaration. Rather than state that the sale is in  
18 danger of collapsing in a declaration under penalty of perjury, County Counsel  
19 James Williams attaches a letter to his declaration. The letter constitutes hearsay  
20 and does not state any reason why the County would not simply accept those AG  
21 Conditions that require the continued provision of essential health services. Mr.  
22 Adcock further points to the hours spent devoted to the task of transferring the  
23 hospitals to the County, and provides no basis for his opinion of the financial risk of  
24 the stay. (*Id.*)

25 John Mills, as an employee of the County, notes that the County participated  
26 in job fairs. (Mills Declaration, p. 7-11 [Dkt No. 15-1.]) However, County staff  
27 would have been paid regardless of the work performed in support of this sale.  
28



1 This is not an appropriate measure of harm to the County.

2 While Paul Lorenz address certain costs expended by Santa Clara Valley  
3 Medical Center in seeking a consolidated license through the California Department  
4 of Public Health, and hours spent to attend planning meetings, these costs are not  
5 enough to overcome the tremendous harm that could befall the local communities  
6 should these hospitals fail to provide necessary medical care. (Lorenz Declaration,  
7 p. 17-22 [Dkt No. 15-1].)

8 **IV. THE PUBLIC INTEREST IS SERVED BY ENSURING THAT THE COUNTY**  
9 **ABIDE BY THE CLINICAL CONDITIONS**

10 The Debtors are nonprofit public benefit corporations that hold charitable  
11 assets. The Attorney General, as a representative of the public, is responsible for  
12 protecting assets held in charitable trust, and has primary responsibility for the  
13 enforcement of charitable trusts. *Holt v. College of Osteopathic Physicians and*  
14 *Surgeons* (1964) 61 Cal.2d 750, 754-755. Case law also establishes that the  
15 Attorney General represents the public beneficiaries of the charitable trust. *In re*  
16 *Veteran's Industries, Inc. of Long Beach v. Thomas C. Lynch* (1970) 8 Cal.App.3d  
17 902 [the Attorney General has the duty to protect the beneficiaries' interest in a  
18 charitable trust]; *In re Ventura* (1963) 217 Cal.App.2d 50, 57 [the Attorney General  
19 has standing to protect charitable gifts]; *In re Zahn* (1971) 16 Cal.App.3d 106, 114  
20 [the Attorney General represents the public which benefits by a charitable trust].

21 As noted above, the 2015 AG Conditions were imposed after careful  
22 consideration of the factors provided in California Corporations Code section 5917  
23 and 5923, including consultation with a healthcare expert pursuant to California  
24 law. The California Attorney General has the primary responsibility to ensure that  
25 the charitable assets proposed to be purchased by the County are used for their  
26 intended purpose and thereby protect the People of the State of California.  
27 Therefore, the Attorney General has continuing legal authority under state law  
28 governing charitable assets to enforce its Conditions.



**CONCLUSION**

For the reasons stated above, the California Attorney General respectfully requests that this Court enter an order staying the Sale Order until the conclusion of an appeal therefrom.

Dated: February 15, 2019

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
JAMES M. TOMA  
Supervising Deputy Attorney General

/s/ Alicia Berry

ALICIA BERRY  
Deputy Attorney General  
*Attorneys for Xavier Becerra,  
California Attorney General*

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## CERTIFICATE OF SERVICE

Case Name: **XAVIER BECERRA,  
California Attorney General,  
v. VERITY HEALTH SYSTEM  
OF CALIFORNIA, INC., et al.**

USDC Case No. **2:19-cv-133-RGK**  
BK Case No. **2:18-bk-20151-ER**

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I hereby certify that on February 15, 2019, I *electronically filed* the following document with the Clerk of the Court by using the CM/ECF system:

**REPLY TO THE OPPOSITIONS OF DEBTORS, THE OFFICIAL  
CREDITOR'S COMMITTEE, AND THE COUNTY OF SANTA  
CLARA [RELATED DOCKET NOS. 6, 15, 17, 18, 20]**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system (see the attached Electronic Mail Notice List)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 15, 2019, at Los Angeles, California.

---

Jane Miyamura  
Declarant

---

/s/ Jane Miyamura  
Signature

## **Mailing Information for a Case 2:19-cv-00133-RGK In Re Verity Health System of California, Inc.**

### **Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

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### **Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)