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

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

In re:
Verity Health System of California,
Inc., et al.,¹

Debtors and Debtors In Possession.

District Court Case 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 VERITY HEALTH SYSTEM
OF CALIFORNIA, INC., ET AL.'S,
NOTICE OF LODGMENT OF
PROPOSED ORDER GRANTING
MOTION TO DISMISS THE APPEAL OF
THE CALIFORNIA ATTORNEY
GENERAL AS MOOT**

Appellee.

Hearing:

Date: April 15, 2019

Time: 9:00am

Location: Courtroom 8C, 350 W. 1st
St., Los Angeles, CA
90012

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



1 **TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Verity Health System Of California, Inc. and
3 the above-referenced affiliated debtors and debtors in possession in the above-
4 captioned chapter 11 bankruptcy cases and appellees herein (collectively, the
5 “Debtors”), hereby lodge a proposed order (the “Order”), attached as **Exhibit 1**
6 hereto, granting their *Motion to Dismiss the Appeal of the California Attorney*
7 *General as Moot* [Docket No. 36] (attached hereto as **Exhibit 2**).

8 **PLEASE TAKE FURTHER NOTICE** that the Debtors are also submitting
9 the Order to the chambers of the Honorable Court under LR 5-4.4.2

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15 Dated: March 15, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

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

19 Attorneys for the Chapter 11 Debtors
20 and Debtors In Possession
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EXHIBIT 1

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Verity Health System of California,
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**ORDER GRANTING APPELLEE
 VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., ET AL.'S MOTION
 TO DISMISS THE APPEAL OF THE
 CALIFORNIA ATTORNEY GENERAL
 AS MOOT**

Appellee.

Hearing:

Date: April 15, 2019

Time: 9:00 a.m.

Location: Courtroom 8C, 350 W. 1st
 St., Los Angeles, CA
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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.

The *Motion to Dismiss the Appeal of the California Attorney General as Moot* [Docket No. 36] (the “Motion”) filed by Verity Health System of California, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), seeking dismissal of this above captioned appeal (the “Appeal”), came on for hearing before this Court on April 15, 2019 (the “Hearing”).

The Court, having reviewed the Motion and the Memorandum of Points and Authorities, the Declaration of Richard G. Adcock in support of the Motion [Docket No. 36-1], any objections, responses or replies properly filed, any arguments at counsel at the Hearing, it further appearing that proper notice of the Motion had been provided, and good and sufficient cause having been shown,

HEREBY FINDS AND CONCLUDES THAT:²

A. The sale (the “Sale”) of the Hospitals (as defined in the Motion) to the County of Santa Clara County (the “County”) under the Sale Order (as defined in the Motion) closed on February 28, 2019. The Bankruptcy Court found that the County was a good faith purchaser under 11 U.S.C. § 363(m).

B. Appellant California Attorney General has failed to obtain a stay of the Sale.

C. This Appeal is statutorily moot under 11 U.S.C. § 363(m).

D. The Debtors have met the requirements of the doctrine of equitable mootness for the relief they seek in the Motion, and, thus, the Appeal is equitably moot.

IT IS HEREBY ORDERED:

1. The Motion is GRANTED in its entirety.

///

² To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. This Appeal is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: _____

Honorable R. Gary Klausner
U.S. District Court Judge

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EXHIBIT 2

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Xavier Becerra
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 Appellant.

Hon. R. Gary Klausner

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

**APPELLEE VERITY HEALTH
 SYSTEM OF CALIFORNIA, INC.,
 ET AL.'S, NOTICE OF MOTION
 AND MOTION TO DISMISS THE
 APPEAL OF THE CALIFORNIA
 ATTORNEY GENERAL AS MOOT**

Appellee.

Hearing:

Date: April 15, 2019

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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.

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), hereby move for the entry of an order dismissing this appeal as statutorily moot and equitably moot (the “Motion”), pursuant to 11 U.S.C. § 363(m) and the doctrine of equitable mootness.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 8013(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), oral argument is not required unless this Court orders otherwise. The Debtors, however, out of an abundance of caution, are setting this Motion for hearing on April 15, 2019, at 9:00 a.m., pursuant to this Court’s Standing Order [Docket No. 27 at ¶ 6].

PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, and the attached Declaration of Richard G. Adcock.

PLEASE TAKE FURTHER NOTICE that, unless this Court orders otherwise, any party opposing or responding to the Motion must file a response (the “Response”) seven days after the service of this Motion, pursuant to Bankruptcy Rule 8013(a)(3)(A). The Debtors will then have seven days after any Response to file a reply (the “Reply”) under Bankruptcy Rule 8013(a)(3)(B).

PLEASE TAKE FURTHER NOTICE that the Court may rule on the Motion at any time after the filing of this Motion, including before any Response or Reply, under Bankruptcy Rule 8013(b).

1 Dated: March 13, 2019

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TANIA M. MOYRON

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4 By /s/ Tania M. Moyron
Tania M. Moyron

5 Attorneys for the Chapter 11 Debtors
6 and Debtors In Possession
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I. INTRODUCTION

Verity Health System of California, Inc. and its affiliated entities (collectively, the “Debtors”), hereby file their motion to dismiss the appeal (the “Appeal”) filed by the California Attorney General (the “AG”) as statutorily and equitably moot. The Appeal stems from the Bankruptcy Court’s order authorizing the Debtors to sell (the “Sale”) O’Connor Hospital and Saint Louise Regional Hospital (collectively, the “Hospitals”) to the County of Santa Clara (the “County”).

Simply put, this Appeal is statutorily moot under 11 U.S.C. § 363 because (i) the Sale to the County closed on February 28, 2019 (the “Closing”), (ii) the Bankruptcy Court held that the County was a good faith purchaser under § 363(m), and (iii) the AG failed to obtain a stay pending Appeal. *See Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570, 576 (9th Cir. 1998) (Under 11 U.S.C. § 363(m), “[w]hen a sale of assets is made to a good faith purchaser, it may not be modified or set aside unless the sale was stayed pending appeal.”). The AG has waived any ability to argue his appeal is not moot, as he acknowledged in numerous filings that if he failed to obtain a stay, his appeal would become moot as soon as the transaction closed. *See* Docket No. 6, at 22 (AG stated that: “[s]ection 363(m) effectively moots any challenge to a section 363 sale that affects the validity of the sale so long as the purchaser acted in good faith and the appellant failed to obtain a stay of the sale. Thus, without the stay, any reversal or modification of the Sale Order on appeal will not affect the validity of [the] sale.”).

The Appeal is also equitably moot because there has been a comprehensive change of circumstances and complex transactions have been entered into that cannot be unwound. As explained in greater detail below, among other things, (i) the Sale closed and the County is the legal owner of the Hospitals, (ii) the County now operates the Hospitals, and (iii) more than \$235 million has changed hands, including more than \$33 million of which has been paid to third parties in reliance on the closing of the Sale. Moreover, the Hospitals provide critical services to low-income,

1 high-need communities and the Debtors and the County have made every effort to
 2 seamlessly transfer these operating Hospitals to ensure continued patient care. As a
 3 result of the AG's failure to obtain a stay, the "eggs are scrambled," and appellate
 4 relief would be highly disruptive or impossible to implement, making this Appeal
 5 equitably moot.

6 Based on the foregoing, and for the reasons set forth in greater detail below,
 7 the Debtors respectfully request that this Appeal be dismissed.

8 **II. BACKGROUND FACTS**

9 **A. General Background And The Bankruptcy Sale Process.**

10 1. On August 31, 2018, the Debtors each filed a voluntary petition for relief
 11 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").²
 12 Debtors' Appx.³ at Nos. 1-3, at 1-72; [Docket No. 16] [Bankr. Docket No. 1].

13 2. Debtor VHS, a California nonprofit public benefit corporation, is the
 14 sole corporate member of five Debtor California nonprofit public benefit
 15 corporations that operate six acute care hospitals, including the Hospitals and other
 16 facilities in the state of California. Debtors' Appx. No. 4, at 77, ¶ 11 [Docket No.
 17 16] [Bankr. Docket No. 8] (Declaration of Richard G. Adcock In Support of
 18 Emergency First-Day Motions (Mr. Adcock is the Debtors' CEO).

19 3. O'Connor is a 358-bed general acute care hospital that serves residents
 20 in the greater San José area. The hospital has a 24-hour emergency department, 11
 21 surgical operating rooms and two cardiac catheterization labs. The hospital offers
 22 comprehensive healthcare services, including emergency, cardiac, orthopedic,
 23 cancer, obstetrics, and sub-acute services. Debtors' Appx. No. 4, at 81. 5 [Docket
 24 No. 16] [Bankr. Docket No. 8].

25
 26 ² Except as otherwise noted, all references to section or chapter herein are to the
 27 Bankruptcy Code, 11 U.S.C. §§ 101, et seq., as amended.

28 ³ All citations to the "Debtors Appx." are to Docket No. 16.

1 4. Saint Louise Regional Hospital is a 93-bed facility and 24-hour
2 emergency department, which provides services to the residents of southern Santa
3 Clara County, including Morgan Hill, San Martin, and Gilroy. The Hospital has an
4 emergency department with eight licensed emergency treatment stations. The
5 Hospital also has five surgical operating rooms for inpatient and outpatient surgical
6 procedures. The Hospital provides comprehensive healthcare services including
7 cancer, emergency, rehabilitation, and surgical care, and is accredited by The Joint
8 Commission. Debtors' Appx. No. 4, at 84, 85, ¶ 42 [Docket No. 16] [Bankr. Docket
9 No. 8].

10 5. Saint Louise Regional Hospital owns and operates the De Paul Urgent
11 Care Center. The De Paul Urgent Care Center is located on the DePaul Campus, an
12 approximately 25-acre campus located in Morgan Hill, and offers patients non-
13 emergency medical services seven days a week. The De Paul Urgent Care Center
14 treats non-life threatening cases, such as minor injuries, colds, flu, and fever.
15 Debtors' Appx. No. 4, at 85, ¶ 43 [Docket No. 16] [Bankr. Docket No. 8].

16 6. The Hospitals were major components of a non-profit health system that
17 is losing \$175 million annually due to regulatory and financial burdens, including the
18 conditions the AG seeks to enforce. Debtors' Appx. Doc. No. 4, at 97-98, ¶ 95
19 [Docket No. 16] [Bankr. Docket No. 8]. The Debtors were unable to sell their
20 Hospitals prepetition, and therefore pursued a sale employing the rehabilitative tools
21 of the Bankruptcy Code. *Id.* at 107-108, ¶¶ 128-130 [Docket No. 16]; *see also id.* at
22 101, ¶¶ 107-108 [Docket No. 16] ("the AG conditions denied the Debtors the benefit
23 of the marketplace . . ."). Only one bidder, the County, immune from the AG
24 conditions under California law, emerged after a marketing process approved by the
25 Bankruptcy Court. *See* Debtors' Appx. No. 9, at 290-293 [Docket No. 16] [Bankr.
26 Docket No. 1041]; Debtors' Appx. No. 8, at 259-260 [Docket No. 16] [Bankr. Docket
27 No. 1005].
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7. On October 1, 2018, the Debtors filed the asset purchase agreement (the “APA”) between the Debtors and the County, which the Bankruptcy Court subsequently approved. AG Appx.⁴ No. 2, at 489-568 [Docket No. 8] [Bankr. Docket No. 365-1].

8. On December 19, 2018, the Bankruptcy Court held a hearing on approval of the APA and the Sale of the Hospitals to the County, whereat counsel for the AG indicated that the AG did “not want to stop the sale of the [H]ospitals,” but still objected to the Sale. *See* Debtors’ Appx. No. 13, at 374-75, Sale Hearing Transcript [Docket No. 16] [Bankr. Docket No. 1148].

9. On December 26, 2018, the Bankruptcy Court issued a decision overruling the AG’s objections on the merits and finding that the AG waived these objections and was equitably estopped from asserting them. AG Appx. No. 14, at 971-983 [Docket No. 8] [Bankr. Docket No. 1146]. The Bankruptcy Court also held that the Sale Order should be effective immediately to allow the Sale to progress to closing. AG Appx. No. 14, at 982-983 [Docket No. 8] [Bankr. Docket No. 1146, at 11-12].

10. On December 27, 2018, the Bankruptcy Court issued its order approving the Sale. AG Appx. No. 15, at 984-1008 [Docket No. 8] [Bankr. Docket No. 1153] (the “Sale Order”). The Bankruptcy Court held that the County “ha[d] proceeded in good faith and without collusion in all respects in connection with the sale process,” made specific factual findings to support this conclusion detailing the vigorous, arms’ length Sale process, and specifically found that the County “is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m).” AG Appx. No. 15 at 989-990, ¶ E [Docket No. 8] [Bankr. Docket No. 1153].

⁴ All citations to the “AG Appx” are to Docket No. 8.

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B. The Appeal And Denial Of A Stay.

11. On January 7, 2019, the AG filed this Appeal. [Docket No. 1].

12. The AG waited a full thirteen days after the entry of the Sale Order, on January 9, 2019, to file his motion to stay the Sale Order (the “Stay”). AG Appx. No. 17, at 1055-87 [Docket No. 8] [Bankr. Docket No. 1219].

13. The Bankruptcy Court then issued a comprehensive opinion denying the Stay on January 30, 2019, followed by an order entered on February 5, 2019. Debtors’ Appx. No. 11, at 324-333 [Docket No. 16] [Bankr. Docket No. 1418]; Debtors’ Appx. No. 12, at 334-37; [Docket No. 16] [Bankr. Docket No. 1464].

14. On February 1, 2019, the AG then moved for the Stay in this Court. [Docket No. 6]. On February 22, 2019, this Court affirmed the Bankruptcy Court’s decision and denied the request for the Stay. [Docket No. 32].

15. Hours after this Court denied the Stay on February 22, 2019, the AG filed his opening appellate brief and essentially repeated the same arguments this Court found were unlikely to succeed on appeal. [Docket Nos. 33; 34]. The AG does not challenge the Bankruptcy Court’s findings that the County is a good faith purchaser entitled to complete the transaction and operate the Hospitals. *See* Debtors’ Appx. No. 13, at 374-75, Sale Hearing Transcript [Docket No. 16] [Bankr. Docket No. 1148].

C. PRE-CLOSING RELIANCE

16. In preparation for the Sale closing, the County has already taken “numerous actions and expend[ed] significant resources in reliance on [the Sale Order]” on both the labor and operational side. *See* AG Appx. No. 18, at 1136 (Mills Decl., at ¶ 14); AG Appx. No. 18, at 1142, Lorenz Dec., at ¶ 5 [Docket No. 8] (testimony of CEO of Santa Clara Valley Medical Center) (describing “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) [Docket No. 8]; AG Appx. No. 1, at 142 (Lorenz Dec., at ¶ 5) [Docket

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No. 8]. For example, after the Sale Order was entered and before the Sale closed, the County invested more than 2,100 staff hours in holding almost daily meetings and collecting and analyzing over 1,800 employment applications.

17. These onboarding efforts resulted in at least \$565,000 of third-party transfers (\$140,000), licensing fees (\$250,000), consulting fees (\$60,000), and good-faith non-refundable vendor payments (\$115,000) (together, these payments are the “County Pre-Closing Transfers”).⁵

18. Similarly, the Debtors also took numerous pre-Closing actions and expended significant resources in reliance on the Sale Order. For example, more than 100 employees of VHS, the Hospitals, and the Debtors’ professionals worked diligently with representatives of the County on transfer of the Hospitals’ operations in an effort exceeding 2,500 man-hours. Exhibit 1, Declaration of Richard G. Adcock in Support of Debtors’ Motion to Dismiss the Appeal of the Appellant California Attorney General (the “Adcock Dec.”), at ¶ 7 (testimony of Debtors’ CEO) [Docket No. 36-1].

19. Numerous third parties were also engaged to provide support, counsel, and labor to make this transition happen. A joint Steering Committee and a joint Work Group met weekly to review the status of all tasks being performed on the Sale, and an internal team of VHS personnel met weekly on the preparation of a Transition Services Agreement. Exhibit 1, Adcock. Dec., at ¶ 8 [Docket No. 36-1]. These Committees drafted “a practical road map” for the lower transitional working groups, which were formed to address specific logistical and technical transition issues. Substantial time was also being spent on public relations, including, among other things, meetings with employees and public relations advisors. Exhibit 1, Adcock Dec., at ¶¶ 7-9 [Docket No. 36-1].

⁵ See AG Appx. No. 18, at 1127 (Mills Dec., at ¶ 11) [Docket No. 8]; AG Appx. No. 18, at 1142-44 (Lorenz Dec., at ¶¶ 6, 9, 10) [Docket No. 8].

D. THE CLOSING AND POST-CLOSING PAYMENTS

20. The County chose Chicago Title Insurance Company (“Chicago Title”) as the title company to handle the closing of the Sale. Exhibit 1, Adcock. Dec., at ¶ 10 [Docket No. 36-1].

21. On February 27, 2019, the County wired Chicago Title the purchase price of approximately \$211.5 million (the “Wire”) not including the deposit. Exhibit 1, Adcock. Dec., at ¶ 11 [Docket No. 36-1].

22. On February 28, 2019, First American Title Insurance Company wired \$23,500,000 to Chicago Title, representing the deposit made by the County upon execution of the APA. Exhibit 1, Adcock. Dec., at ¶ 12 [Docket No. 36-1].

23. On February 28, 2019, the Closing occurred, with all conditions precedent to Closing either having been satisfied or waived under the APA. Exhibit 1, Adcock. Dec., at ¶ 10 [Docket No. 36-1].

24. Pursuant to paragraph 13(a) of the Sale Order, AG Appx. No. 15 at 997-998] [Docket No. 8] [Bankr. Docket No. 1153], the APA and the Debtors’ postpetition DIP Financing Agreement, Chicago Titled transferred the following amounts to the Debtors:

- a. \$109,993,864.86 to the O’Connor escrow account;
- b. \$56,763,276.76 to the Saint Louise escrow account;
- c. \$15,675,777.66 to a Verity Holdings, LLC escrow account;
- d. \$715,934.01 to a VHS escrow account; and
- e. \$23,500,000.00 to an escrow account with Chicago Title (the “Title Company” and “Title Escrow Account,” respectively).

Exhibit 1, Adcock. Dec., at ¶ 14 [Docket No. 36-1].

25. At Closing, Chicago Title made the following payments (the “Closing Payments”) out of the Sale Proceeds to third parties totaling approximately \$27,127,865, including: (i) \$961,982.00 to holders of materialmen and mechanics’ liens on the Hospitals; (ii) \$7,010,269.74 in “cure costs” to counterparties of contracts

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being assumed and assigned to SCC, pursuant to the Sale Order, AG Appx No. 15 at 999-1001 [Docket No. 8] [Bankr. Docket No. 1153], (iii) \$16,805,613.34 to the State of California Department of Health Care Services (“CDHCS”); and (iv) 2,350,000.00 to Cain representing its transaction fee on the Sale. Exhibit 1, Adcock. Dec., at ¶ 15 [Docket No. 36-1].

26. In connection with the Debtors’ obligations to employees (the “Post Closing Payments”) related to the Closing, the Debtors paid approximately \$6,745,898 to employees, including the following: (i) \$6,221,298.00 in PTO for former Debtors’ employees, pursuant to settlement agreements approved by the Bankruptcy Court [Bankr. Docket Nos. 1575; 1576]; and (ii) \$524,600.00 in bonuses under the Bankruptcy Court “Key Executive Incentive Plan,” [Bankr. Docket Nos. 631; 876], with such bonuses tied to the amount and receipt of Sale funds. Exhibit 1, Adcock. Dec., at ¶ 16 [Docket No. 36-1].

27. The foregoing closing payments were made in reliance on Sale Order and the Closing. Exhibit 1, Adcock. Dec. at ¶ 15 [Docket No. 36-1].

28. Moreover, in reliance on the Bankruptcy Court’s Order requiring the Debtors to file a motion to reject certain executory contracts and unexpired leases related to the Hospitals (the “Rejected Contracts”), the Debtors filed their motion to reject certain executory contracts and unexpired leases that were not assumed by the County and provided no benefit to the estates since the Debtors were no longer operating O’Connor and Saint Louise. Exhibit 1, Adcock. Dec., at ¶ 17 [Docket No. 36-1].

E. THE TRANSFER OF THE HOSPITALS, THE TSA, AND THE TERMINATION OF THE CBAs

29. Pursuant to Section 1.4 of the APA, the Closing was effective on March 1, 2019, at 12:01 a.m. PST. Exhibit 1, Adcock. Dec., at ¶ 17 [Docket No. 36-1]; AG Appx. No. 2, at 505 [Docket No. 8] [Bankr. Docket No. 365-1]. Since that time, the County has been operating the Hospitals and gained complete access and control to

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1 the Hospitals. Exhibit 1, Adcock. Dec., at ¶ 18 [Docket No. 36-1]. Specifically, and
2 among other things, (i) IT systems were transferred from the Debtors to the County,
3 (ii) the County took control of the security and operating equipment, (iii) employees
4 were on-boarded to the County, and (iv) ownership of the Hospitals' operating assets
5 was transferred from the Debtors to the County. Exhibit 1, Adcock. Dec., at ¶ 18
6 [Docket No. 36-1]. The licenses that the County obtained, including licenses to
7 operate the Hospitals as general acute care hospitals, pharmacy licenses, and other
8 licenses, became effective on March 1, 2019. Exhibit 1, Adcock. Dec., at ¶ 18
9 [Docket No. 36-1].

10 30. On March 1, 2019, the Debtors and the County executed the Transition
11 Services Agreement (the "TSA") whereby the County retained VHS to provide
12 certain support services for the transition of the Hospitals, with VHS providing
13 personnel to support the County during business hours and "on-call" 24 hours a day,
14 every day of the effectiveness of the TSA. Exhibit 1, Adcock. Dec., at ¶ 19 [Docket
15 No. 36-1].

16 31. In the TSA, the County agreed to pay the Debtors \$1,600,424.00, per
17 month (which amount is to be ultimately "trued up"), based on actual services
18 provided. Exhibit 1, Adcock. Dec., at ¶ 20 [Docket No. 36-1]. To date, the County
19 has paid the Debtors \$2,470,205 under the TSA, which also includes amounts related
20 to physicians transition services and equipment rentals for the month of March.
21 Exhibit 1, Adcock. Dec., at ¶ 20 [Docket No. 36-1]. The Debtors have performed an
22 estimated \$629,675 of services under the TSA since the Closing. Exhibit 1, Adcock.
23 Dec., at ¶ 20 [Docket No. 36-1].

24 32. Prior to and as a condition to Closing, the Debtors obtained Bankruptcy
25 Court approval to reject or otherwise modify collective bargaining agreements with
26 labor unions for the Hospitals (the "CBAs"), which became effective upon the
27 Closing. Exhibit 1, Adcock. Dec., at ¶ 21 [Docket No. 36-1].
28

III. ARGUMENT

A. MOOTNESS AND BANKRUPTCY APPEALS.

“The doctrine of mootness has special relevance in the context of bankruptcy appeals and ‘comes in a variety of flavors: constitutional, equitable, and statutory [under § 363(m)].’” *In re Castaic Partners II, LLC*, 823 F.3d 966, 968 (9th Cir. 2016) (cited by *Fuentes v. Goodrich*, 2018 WL 2460283, at *3 (C.D. Cal. May 29, 2018)).

Here, the Debtors assert that the Appeal is both statutorily and equitably moot.

B. THE APPEAL IS STATUTORILY MOOT.

Section 363(m) states that an appellate court cannot invalidate a bankruptcy court order authorizing a sale “unless such authorization and such sale ... were stayed pending appeal.” 11 U.S.C. § 363(m). As explained by the Ninth Circuit:

[Statutory] mootness . . . applies *when an appellant has failed to obtain a stay from an order that permits a sale of a debtor’s assets* [and] the mootness rule dictates that the appellant’s failure to obtain a stay moots the appeal.

In re Onouli-Kona Land Co., 846 F.2d 1170, 1171 (9th Cir. 1988) (emphasis added); *In re Ewell*, 958 F.2d 276, 282 (9th Cir. 1992) (“The Debtor’s appeals are moot. Because the Buyer was a good faith purchaser, under 11 U.S.C. § 363(m) the sale may not be modified or set aside on appeal unless the sale was stayed pending appeal. It was not, and the court thus cannot grant any effective relief.”); *see also In re Rare Earth Minerals*, 445 F.3d 359, 363 (4th Cir. 2006) (“Where a sale of a bankrupt’s assets *has not been stayed, an appeal challenging the sale’s validity is moot* because ‘the court has no remedy that it can fashion even if it would have determined the issues differently.’”) (emphasis added) (citations omitted) (quoting *Anheuser-Busch, Inc. v. Miller (In re Stadium Mgmt. Corp.)*, 895 F.2d 845, 847 (1st Cir. 1990) (collecting cases)). Congress passed § 363(m) to further the policy goals of “finality and efficiency” in bankruptcy sales and to prevent hardship to parties relying on the

1 a sale process. *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 2:16-BK-17463-ER,
 2 2018 WL 1229989, at *3 (C.D. Cal. Jan. 19, 2018) (citing *Cinicola v.*
 3 *Scharffenberger*, 248 F.3d 110, 122 (3d Cir. 2001) (“[Section 363(m)]’s blunt finality
 4 ... attracts investors and helps effectuate debtor rehabilitation.”)); *In re Lehman Bros.*
 5 *Holdings, Inc.*, 415 B.R. 77, 85 (S.D.N.Y. 2009) (statutory mootness based on
 6 “assurance of finality [so that] purchasers [will not] demand a large discount for
 7 investing in a property that is laden with the risk of endless litigation as to who has
 8 rights to estate property.”).

9 The application of § 363(m) therefore turns on whether a stay is ***obtained, not***
 10 ***merely sought***. “There is no exception to this rule where the debtor sought a stay
 11 pending appeal but was denied. The plain language of § 363(m) states that an
 12 appellate court order cannot invalidate a sale that the bankruptcy court authorized
 13 ‘unless such authorization and such sale ... were stayed pending appeal’ (not ‘unless
 14 the debtor attempted to obtain a stay pending appeal’).” *In re Steffen*, 552 Fed. Appx.
 15 946, 949 (11th Cir. 2014) (parenthetical in original).⁶ Put succinctly by another Court
 16 in this District in *In re Gardens Reg'l Hosp.* in dismissing another AG appeal of a
 17 sale order, “[w]hen the protection of this statute applies, there is no way to continue
 18 to challenge the approved sale, and the matter is therefore statutorily moot.” 2018
 19 WL 1229989, at *4.

20 Here, § 363(m) renders the Appeal statutorily moot because: there is (i) a sale
 21 order under §§ 363(b) and (f); (ii) the Bankruptcy Court made a finding that the
 22 County is a good faith purchaser; and (iii) there is no stay pending appeal. Similarly,
 23 as referenced above, the District Court in *In re Gardens* dismissed the AG’s appeal
 24 of a sale order because the appeal was statutorily moot under § 363(m) when these

26 ⁶ See also *In re Baker*, 339 B.R. 298, 303 (E.D.N.Y. 2005) (section 363(m) “does not
 27 say that the sale must be proper under § 363(b); it says that the sale must be authorized
 28 under § 363(b) ... [I]t matters not whether the authorization was correct or
 incorrect.”).

1 same factors were present. *Id.* at *4 (“[T]he Bankruptcy Court expressly found
 2 [buyer] to be a good faith purchaser, and both the Bankruptcy Court and this Court
 3 declined to stay this matter pending appeal [and] the sale falls under the protection
 4 of § 363(m), [so] the present appeal [of the AG] is statutorily moot[.]”); *see also*
 5 *Fuentes*, 2018 WL 2460283 (“Because the bankruptcy court determined that [buyer]
 6 is a good faith purchaser and denied [the movant’s] motion to stay the [sale] pending
 7 appeal, the requirements of § 363(m) are satisfied and the appeal is rendered moot.”).

8 *1. The Appeal Threatens The Sale Even Though It Ostensibly Seeks*
 9 *Finite Relief.*

10 The AG may argue (as he has done before) that his appeal is immune from the
 11 reach of § 363(m) because he only seeks to modify the Sale Order and not to “block”
 12 it.⁷ Courts have properly rejected such arguments:

13 [Movant] argues that the only relief it is seeking is [to]
 14 preserves advertising rights and] we can fashion
 15 appropriate relief without unravelling the sale. ***But such***
 16 ***relief would change the deal that the purchaser made.***
 17 [The buyer] intended to sell the advertising space [itself]
 18 and made its bid based on that assumption. ... It is
 19 axiomatic that ‘one cannot challenge a central element of a
 20 purchase ... without challenging the validity of the sale
 21 itself.’

22 *In re Stadium Mgmt. Corp.*, 895 F.2d at 849 (emphasis added) (citations omitted).

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 25 ⁷ The AG, in *In re Gardens*, “relying on [the case of] *Clear Channel Outdoor, Inc. v.*
 26 *Knupfer (In re PW, LLC)*, 391 B.R. 25 (B.A.P. 9th Cir. 2008), [argued] that § 363(m)
 27 protects ‘only the bare transfer of title,’ and does not preclude a challenge to the terms
 28 of sale, including the ‘interest in ... property’ referred to in § 363(f).” 2018 WL
 1229989, at *4. The *Gardens* Court firmly rejected this argument and criticized *In*
re PW, LLC as “non-binding” and an “aberration.” *Id.* at *5.

1 The AG's conditions threaten the Sale by "changing the deal," such as
 2 requiring the County "to enter into contracts with certain entities [that are] well aware
 3 of the AG's requirement [resulting in] no bargaining power [for the Hospital's owner]
 4 with those entities[.]" Debtors. Appx. at Doc. No. 4, 101, ¶ 109 [Docket No. 16]
 5 [Bankr. Docket No. 8]. There is no exception to the statutory mootness provisions
 6 in the Bankruptcy Code to allow a court to effectively modify a transaction to which
 7 the parties themselves entered.

8 Again, the policy of statutory mootness is to provide an "assurance of finality
 9 [so that] purchasers [will not] demand a large discount for investing in a property that
 10 is laden with the risk of endless litigation as to who has rights to estate property." *In*
 11 *re Lehman Bros. Holdings, Inc.*, 415 B.R. at 85. This Appeal is the epitome of the
 12 "risk of endless litigation," to "change the deal," that Congress passed § 363(m) to
 13 obviate. Moreover, as a practical matter and as this Court found, either the current
 14 Sale closes or the Hospitals are likely to close. [Docket No. 32 at 6]. There is no
 15 possibility of the "changed" deal the AG wants to impose. Section 363(m) applies
 16 in these circumstances and should be enforced.

17 **C. The Appeal is Equitably Moot.**

18 A Court considers four factors to determine equitable mootness: (1) whether
 19 and how a stay was sought; (2) whether substantial consummation of the sale has
 20 occurred; (3) the effect a remedy may have on third parties not before the court; and
 21 (4) whether the bankruptcy court can fashion effective and equitable relief without
 22 completely knocking the props out from under the sale and thereby creating an
 23 uncontrollable situation for the bankruptcy court. *In re Thorpe Insulation Co.*, 677
 24 F.3d 869, 881 (9th Cir. 2012) (cited and applied by *In re Ahn*, 705 Fed. Appx. 581,
 25 582 (9th Cir. 2017) ("[e]quitable mootness concerns whether changes to the status
 26 quo following the order being appealed make it impractical or inequitable to
 27 unscramble the eggs.")).

Applying these factors in the sale context, courts focus on whether there has been a “comprehensive change of circumstances ... so as to render it inequitable for this court to consider the merits of the appeal,” including the fact that third parties would be unreasonably adversely affected by an appeal. *In re Tenorio*, 2018 WL 989691, at *6 (B.A.P. 9th Cir. Feb. 8, 2018) (citing *In re Thorpe*, 677 F.3d at 881); *In re Gotcha Int’l L.P.*, 311 B.R. 250, 254 (B.A.P. 9th Cir. 2004)). In other words, “[a]n appeal is equitably moot if the case presents ‘transactions that are so complex or difficult to unwind’ that ‘debtors, creditors, and third parties are entitled to rely on [the] final bankruptcy court order.’” *In re Tenorio*, 2018 WL 989691 at *6 (quoting *In re Thorpe Insulation Co.*, 677 F.3d at 880).

Here, there has been a comprehensive change of circumstances and unwindable complex transactions that render this Appeal equitably moot.⁸ Not only does the County now own and operate the Hospital after the Closing of the Sale, (i) over \$ 33 million has been paid by both the Debtor and the County to third parties (including \$16 million to the State of California), (ii) the Hospitals’ employees are now employed by the County (or have been terminated), (iii) the Debtors’ CBAs are

⁸ The facts are set forth in detail in the Declaration of Richard G. Adcock in Support of Opposition to the Appellant California Attorney General’s Motion for Stay Pending Appeal [Docket No. 26-1 at 1-7]; Declaration of Paul E. Lorenze in Opposition to the California Attorney General’s Motion for Stay Pending Appeal [Docket No. 26-1 at 17-22]; Declaration of Sara H. Cody in Opposition to the California Attorney General’s Motion for Stay Pending Appeal [Docket No. 26-1 at 23-26]; Declaration of Jeffery Smith, M.D., J.D. in Opposition to the California Attorney General’s Motion for Stay Pending Appeal [Docket No. 26-1 at 27-34]; Declaration of John P. Mills in Opposition to the California Attorney General’s Motion for Stay Pending Appeal [Docket No. 26-1 at 7-11]; Declaration of Richard G. Adcock [Docket. No. 8 at 1122-1125]; Declaration of John Mills [Docket. No. 8 at 1122-1125]; Declaration of Paul E. Lorenz [Docket No. 18 at 1140-1145]; Declaration of Jeffrey Smith, M.D., J.D., [Docket No. 18 at 1146-1149]; Declaration of Sarah Cody, M.D., [Docket No. 18 at 1150-1152].

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1 now terminated, and (iv) the Debtors, the County, and third parties diligently worked
2 for months on consummating the Sale.

3 The significant payments alone to third parties render the Appeal moot,⁹
4 including (i) at least \$560,000 in County Pre-Closing Payments, and (ii) \$33 million
5 in Closing Payments and Post Closing Payments made to effectuate the Sale Order
6 and consummate the Sale. Exhibit 1, Adcock Dec. at 7-8 [Docket No. 36-1]; AG
7 Appx. No. 18, at 1142-44 (Lorenz Dec., at ¶¶ 6, 9, 10) [Docket No. 8]; *see also In re*
8 *Combined Metals Reduction Co.*, 557 F.2d 179, 189-92 (9th Cir. 1977) (dismissing
9 as moot appeals from orders approving and confirming sales and leases made to third
10 parties not before the court). For example, the Debtors paid \$16 million to the State
11 of California, over \$7 million to “cure” prepetition defaults for contracts the County
12 is assuming, and nearly \$1 million to mechanic’s liens holders in total reliance of the
13 Sale Order. Exhibit 1, Adcock Dec. at 7-8 [Docket No. 36-1]. Further, the County
14 commenced paying the Hospitals’ Employees and the Debtors paid PTO to former
15 Employees by virtue of the Sale. Exhibit 1, Adcock Dec. at 8 [Docket No. 36-1].

16 Additionally, contractual rights have now been terminated or modified.
17 Specifically, the Debtors have now rejected and terminated CBAs and rejected
18 various executory contracts and unexpired leases. Exhibit 1, Adcock Dec. at 8
19 [Docket No. 36-1]. Further, as to unexpired contracts and leases that were assumed
20 and assigned to the County, the counterparties efforts are now focused on maintaining
21 a long-term relationship with a new, solvent buyer.

22 The foregoing Herculean and expensive effort to transfer the Hospitals
23 seamlessly and safely is the paradigm changed circumstance that make it inequitable
24 to allow the AG to destroy the Sale by pursuing a meritless Appeal.

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27 ⁹ *See In re Baker & Drake, Inc.*, 35 F.3d 1348, 1351 (9th Cir. 1994) (noting that the
28 classic example of mootness in the bankruptcy context is when a transfer to a “third
party precludes meaningful relief.”).

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IV. CONCLUSION

For all the above reasons, the Court should dismiss the Appeal.

Dated: March 13, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

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

Attorneys for the Chapter 11 Debtors
and Debtors In Possession

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CERTIFICATE OF COMPLIANCE

This Motion complies with the type-volume limitations of the Bankruptcy Rules. Excluding relevant items under Bankruptcy Rule 8015(g), it contains 5,002 words and is 16 pages, under the 5,200 word limit of Bankruptcy Rule 8013(f)(3). Fed. R. Bankr. P. 8015(g); 8013(f)(3).

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EXHIBIT 1

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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-RGK

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

Adversary Case Number: NA

**DECLARATION OF RICHARD G.
 ADCOCK IN SUPPORT OF
 APPELLEE VERITY HEALTH
 SYSTEM OF CALIFORNIA, INC.,
 ET AL.'S, MOTION TO DISMISS
 THE APPEAL OF THE
 CALIFORNIA ATTORNEY
 GENERAL AS MOOT**

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 2:18-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
18 Hospital ("O'Connor") and Saint Louise Regional Hospital ("Saint Louise," and
19 together with O'Connor, the "Hospitals") between the Debtors and Santa Clara
20 County (the "County"), which sale was approved by the Bankruptcy Court [Docket
21 No. 8, Doc No. 15, at 984-1008] (the "Sale Order" and "Sale," respectively),
22 pursuant to that Asset Purchase Agreement between the Debtors and the County
23 (the "APA") [Docket Nos. 8-5; 8-6, at Doc. No. 2, 489-568].

24 4. Except as otherwise indicated herein, this Declaration is based upon
25 my personal knowledge, my review of relevant documents, information provided to
26 me by employees of the Debtors and Cain Brothers & Company, LLC, a division of
27 KeyBanc Capital Markets ("Cain") the Debtors' investment bankers, and the
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1 Debtors' legal and financial advisors, or my opinion based upon my experience,
2 knowledge, and information concerning the Debtors' operations and the healthcare
3 industry. If called upon to testify, I would testify competently to the facts set forth
4 in this Declaration.

5 5. I make this declaration in support of *Appellee Verity Health System Of*
6 *California, Inc., et. al.'s, Motion To Dismiss The Appeal Of The California*
7 *Attorney General As Moot*, which seeks to dismiss this above-captioned appeal (the
8 "Appeal").

9 6. The Debtors' estates are in a precarious financial position, with
10 substantial daily net cash losses, as set forth in more detail in my declaration filed
11 on August 31, 2018 [Docket No. 16, Doc. No. 4, 97-98, at ¶ 95]. Though the Sale
12 has closed (the "Closing"), because the Appeal still challenges the Sale Order, it is
13 my opinion that the Appeal threatens the Debtors' ability to achieve what they set
14 out to do when they commenced their chapter 11 cases—to maintain patient care, to
15 transfer these important Hospitals to new owners with the financial wherewithal to
16 continue to fulfill the Hospitals' historical charitable mission, and enable the
17 Debtors to meet their debt obligations in their Chapter 11 Cases.

18 **A. Pre-Closing Reliance and Actions**

19 7. Before the Closing, the Debtors took numerous actions and expended
20 significant resources in reliance on the Sale Order on both the labor and operational
21 side. More than 100 employees of VHS, O'Connor, Saint Louise, Berkeley
22 Research Group ("BRG") and Dentons US LLP ("Dentons") have been working
23 with representatives of the County on transfer of the Hospitals' operations.
24 Numerous other third parties, perhaps with equal or a greater number of employees,
25 were also engaged to provide support, counsel, and labor for this transition. These
26 include but are not exclusive of public relations consultants, and outside legal
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1 counsel Nelson Hardiman. In total, the Debtors alone have already spent over
2 2,500 hours devoted to the task of transferring the Hospitals to the County.

3 8. Leading efforts on the ground, a joint Steering Committee met every
4 Monday (consisting of approximately 13 persons from VHS and a nearly equal
5 number of persons from the County, all executive levels), a joint leadership group
6 met every Tuesday to review the status of all tasks being performed on the sale
7 (consisting of approximately 26 people from VHS, and a nearly equal number of
8 persons from the County), and an internal team of VHS personnel met every
9 Thursday on the preparation of the Transition Services Agreement (“TSA”). These
10 Committees drafted policy, strategy and “a practical road map” for the subsidiary
11 transitional work groups.

12 9. Personnel and executives alike, at VHS, O’Connor and Saint Louise
13 formed those transitional working groups to address specific transition issues.
14 More specifically, since December 27, 2018, subject-matter work groups were
15 formed and regularly met, including IT, Revenue Cycle, Human Resources, Supply
16 Chain Management and Finance. Starting the week of January 14, 2019, other
17 work groups were formed to address Quality & Clinical Performance and Capital
18 Equipment. More specifically, the transition work (the “Transition Work”) has
19 included:

- 20 a. **Transition Services Agreement**: Personnel from VHS, O’Connor and
21 Saint Louise, together with personnel from BRG and Dentons, prepared
22 the extensive TSA, which outlines the transition of services and
23 responsibilities from the two Hospitals to the County. In that regard,
24 personnel at VHS, O’Connor, Saint Louise, BRG and Dentons identified
25 vendor contracts being transferred to the County; reviewed revenue and
26 considered staffing issues; and prepared a business plan for the Hospitals.

1 b. **Information Technology (“IT”)**: Major time and effort was and
2 continues to be spent on IT, transferring the VHS networks for O’Connor
3 and Saint Louise into the network at the County, which has required
4 extensive coordination between the SCC and Debtor IT teams. This work
5 has totaled over 200 hours incurred by skilled Debtor employees. The
6 work was primarily devoted to developing interfaces from the current
7 VHS system to the SCC network for SCC to seamlessly take over
8 operation of the Hospital’s crucial IT components, and to disconnect the
9 VHS network from O’Connor and Saint Louise. These steps were
10 necessary to enable the County to keep the IT systems necessary for the
11 smooth delivery of patients care. For example, VHS, O’Connor and Saint
12 Louise successfully put in place a “secured network tunnel” connecting
13 VHS’s San Jose Data Center with the Santa Clara County Data Center.
14 This tunnel allowed sharing of physician credentialing files and patient
15 accounting systems. Additionally, VHS modified its employee “time
16 card” system, called KRONOS, whereby employees “punch in” and
17 “punch out,” to conform with the County’s system and allow the County
18 to seamlessly calculate employee time and pay. The Debtors thus shared
19 important and otherwise confidential trade practices with the County.

20 c. **Corporate Communication Affairs, and Marketing:** A substantial
21 amount of time was spent on communications and public relations,
22 including meetings with public relations advisors; meetings with the
23 County on transition informational announcements; gathering and
24 documenting all existing materials on O’Connor and Saint Louise;
25 creating “frequently asked questions” documents about the Hospitals;
26 conducting meetings between directors and managers of O’Connor and
27 Saint Louise with representatives of the County on personnel issues;
28

conducting “question and answer” sessions for the Medical Staff and County Executives; conducting meetings by and between the County and the Hospitals’ Cardiovascular Services Physicians, Family Medicine Physicians and Orthopedic Physicians; creating documents pertaining to the post-sale announcements and publicity statements of O’Connor and Saint Louise; meeting with employees of O’Connor and Saint Louise to discuss the transfer; photographing and documenting all signage with current O’Connor and Saint Louise logos; creating New Patient Guidelines; and transferring the website currently in place for O’Connor and Saint Louise.

d. **Human Resources, Talent Acquisition and Employee Relations:** The County and VHS held numerous job fairs to ensure retention of current employees. VHS also provided its employees counseling and guidance regarding the transition to the County. Additionally, VHS granted contract term extensions for physicians and employees in preparation for the Sale. These extensions were agreed to (and consented to by the County) with the expectation of and in reliance upon the Sale to the County closing according to schedule (i.e., as of February 28, 2019). Even more importantly, is that, as of March 12, 2019, hundreds of former VHS nurses, technicians and staff have accepted employment with the County and acted in reliance on having continued employment.

e. **Accounting, Financial Management and Corporate Finance:** Finance Teams, including approximately 25 individuals from both VHS and the County, with personnel from BRG and Dentons, coordinated financial transition issues. Substantial work was performed relating to the California Hospital Quality Assurance Fee Program, including gathering of data, meetings, correspondence and court filings. These included

1 voluminous amounts of data mining, storage, forecasting and analytics in
2 a very short span of time.

3 f. **Legal Counsel, Compliance and Risk Management:** Our legal counsel,
4 both in-house and Dentons, have been preparing extensive legal
5 documents in connection with the transition. The work encompassed
6 diligent legal research, drafting and negotiating the asset purchase
7 agreement and related transfer documents, preparation of pleadings and
8 motions, and a massive number of telephonic/electronic and in person
9 meetings.

10 g. **Outside Special Healthcare Regulatory Counsel:** In addition to
11 Dentons, VHS retained the law firm of Nelson Hardiman, LLP (“Nelson
12 Hardiman”) to act as special regulatory counsel. Nelson Hardiman
13 prepared change of ownership applications for various licenses and
14 permits, including but not limited to hospital licenses, pharmacy permits,
15 FCC radio station authorizations, tissue bank licenses, laboratory licenses
16 and radiology licenses. Nelson Hardiman gathered information from
17 various contacts at O’Connor and Saint Louise and answered questions
18 from the County regarding licensure, permits and current operations. In
19 addition, Nelson Hardiman spent significant time, with Dentons, in
20 negotiating settlement agreements with the U.S. Department of Health
21 and Human Services, Centers for Medicare and Medicaid Services, and
22 the California Department of Health Care Services.

23 **B. The Closing**

24 *i. Post-Closing Wire and Payments*

25 10. The County chose Chicago Title Insurance Company (“Chicago
26 Title”) as the title company to handle the Closing of the Sale.

11. On February 27, 2019, the County wired Chicago Title the purchase price of approximately \$211.5 million (the “Wire”) not including the deposit.

12. On February 28, 2019, First American Title Insurance Company wired \$23,500,000 to Chicago Title, representing the deposit made by the County upon execution of the APA.

13. On February 28, 2019, the Closing occurred, with all conditions precedent to Closing either having been satisfied or waived under the APA.²

14. Pursuant to paragraph 13(a) of the Sale Order [Docket No. 15 at 997-998], the APA and the Debtors’ postpetition DIP Financing Agreement, Chicago Titled transferred the following amounts to the Debtors:

- a. \$109,993,864.86 to the O’Connor escrow account;
- b. \$56,763,276.76 to the Saint Louise escrow account;
- c. \$15,675,777.66 to a Verity Holdings, LLC escrow account;
- d. \$715,934.01 to a VHS escrow account; and
- e. \$23,500,000.00 to an escrow account with Chicago Title (the “Title Company” and “Title Escrow Account,” respectively).

15. At Closing, Chicago Title made the following payments (the “Closing Payments”) out of the Sale Proceeds to third parties totaling approximately \$27,127,865, including: (i) \$961,982.00 to holders of materialmen and mechanics’ liens on the Hospitals; (ii) \$7,010,269.74 in “cure costs” to counterparties of contracts being assumed and assigned to SCC, pursuant to the Sale Order [Docket No. 15 at 999-1001]); (iii) \$16,805,613.34 to the State of California Department of Health Care Services (“CDHCS”) [Bankr. Docket No. 1663; 1666]; and (iv) \$2,350,000.00 to Cain representing its transaction fee on the Sale.

16. The foregoing Closing Payments were made in reliance on the Sale Order and Closing.

² AG. Appx. [Docket No. 8] at Doc. No. 6, 544.

1 17. In connection with the Debtors' obligations to employees (the "Post
2 Closing Payments") related to the Closing, the Debtors paid approximately
3 \$7,215,636 to employees, including the following: (i) \$6,221,298.00 in PTO for
4 former Debtors' employees, pursuant to settlement agreements approved by the
5 Bankruptcy Court [Bankr. Docket Nos. 1575; 1576]; (ii) \$469,738.00 in severance
6 for former Debtors' employees, including pursuant to settlement agreements
7 approved by the Bankruptcy Court [Bankr. Docket Nos. 1575; 1576]; and (iii)
8 \$524,600.00 in bonuses under the Bankruptcy Court "Key Executive Incentive
9 Plan," [Docket Nos. 6631; 876], with such bonuses tied to the amount and receipt
10 of Sale funds.

11 18. In reliance on the Bankruptcy Court's Order requiring the Debtors to
12 file a motion to reject certain executory contracts and unexpired leases related to the
13 Hospitals (the "Rejected Contracts"), the Debtors filed their motion to reject certain
14 executory contracts and unexpired leases [Bankr. Docket No. 1673] that were not
15 assumed by the County and provided no benefit to the estates since the Debtors
16 were no longer operating O'Connor and Saint Louise.

17 *ii. The Transfer Of The Hospitals, The TSA, and The Debtors' Employees*

18 19. Pursuant to Section 1.4 of the APA, the Closing was effective on
19 March 1, 2019, at 12:01 a.m. PST. Since that time, the County has been operating
20 the Hospitals and gained complete access and control to the Hospitals. Specifically,
21 and among other things, (i) IT systems were transferred from the Debtors to the
22 County, (ii) the County took control of the security and operating equipment, (iii)
23 employees were on-boarded to the County, and (iv) ownership of the Hospitals'
24 operating assets was transferred from the Debtors to the County. The licenses that
25 the County obtained, including licenses to operate the Hospitals as general acute
26 care hospitals, pharmacy licenses, and other licenses, became effective on March 1,
27 2019.

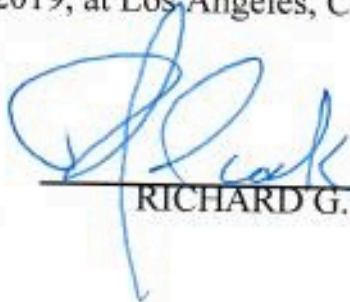
1 20. On March 1, 2019, the Debtors and the County executed the TSA
2 whereby the County retained VHS to provide certain support services for the
3 transition of the Hospitals, with VHS providing personnel to support the County
4 during business hours and "on-call" 24 hours a day, every day of the effectiveness
5 of the TSA.

6 21. In the TSA, the County agreed to pay the Debtors \$1,600,424.00, per
7 month (which amount is to be ultimately "trued up"), based on actual services
8 provided. To date, the County has paid the Debtors \$2,470,205 under the TSA,
9 which also includes amounts related to physicians transition services and equipment
10 rentals for the month of March. The Debtors have performed an estimated
11 \$629,675 of services under the TSA since the Closing.

12 22. Prior to and as a condition to Closing, the Debtors obtained
13 Bankruptcy Court approval to reject or otherwise modify collective bargaining
14 agreements with labor unions for the Hospitals [Bankr. Docket No. 1575-1578],
15 which became effective upon the Closing.

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

18 Executed this 13th day of March 2019, at Los Angeles, California.

19
20
21 
22 RICHARD G. ADCOCK
23

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