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California Department of Health Care Services

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION
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13 **In re:**

14
15 **VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al.,**

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17 Debtor and Debtors In Possession.
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CASE NO. 2:18-bk-20151-ER

CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S OBJECTIONS TO DEBTORS' PROPOSED DISCLOSURE STATEMENT AND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION

Hearing: July 2, 2020
Time: 10:00 a.m.
Courtroom: 1568
Judge Ernest M. Robles

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21 /x/ Affects All Debtors.
22 /x/ Affects Verity Health System of California, Inc.
23 Affects O'Connor Hospital
24 Affects Saint Louise Regional Hospital
25 Affects St. Francis Medical Center
26 Affects St. Vincent Medical Center
27 /x/ Affects Seton Medical Center
28 Affects O'Connor Hospital Foundation
Affects Saint Louise Regional Hospital Foundation
Affects St. Francis Medical Center of Lynwood Foundation
Affects St. Vincent Foundation
Affects St. Vincent Dialysis Center,



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Inc. Affects Seton Medical Center Foundation Affects Verity Business Services Affects Verity Medical Foundation /x/ Affects Verity Holdings, LLC Affects De Paul Ventures, LLC Affects De Paul Ventures – San Jose Dialysis, LLC, Debtors and Debtors in Possession.
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INTRODUCTION

It is clear from the Asset Purchase Agreement (APA) for both the sale of Seton Medical Center (Seton) and St. Francis Medical Center (St. Francis) that an agreement or the absence thereof with California Department of Health Care Services (Department) related to the transfer of Medi-Cal Provider Agreements for Seton and St. Francis could materially impact the sale of those two hospitals. Despite such significance, the Debtors' proposed Disclosure Statement makes no reference to the resolution of issues related to the proposed transfer of the Medi-Cal Provider Agreements for Seton and St. Francis. This material fact must be included in the proposed Disclosure Statement. As such, the proposed Disclosure Statement must be revised accordingly.

Further, the proposed Disclosure Statement misstates the history of the Department's appeal regarding this Court's ruling on the transfer of the Medi-Cal Provider Agreements related to the sale of hospitals to Strategic Global Management, Inc. (SGM). This misrepresentation, as explained below, must be removed from the Debtors' proposed Disclosure Statement.

OBJECTIONS AND RESPONSES

I. THE PROPOSED DISCLOSURE STATEMENT MUST DISCLOSE THE SIGNIFICANCE OF THE MEDI-CAL PROVIDER AGREEMENT TRANSFER ISSUES UPON THE DISTRIBUTION OF THE ESTATE'S FUNDS

A. The Sale of Seton Is Conditioned upon an Agreement with the Department

The APA for the sale of Seton mandates resolution of Seton's Medi-Cal debts and issues related to the transfer of Seton's Medi-Cal Provider Agreement before the sale closes. Paragraph 8.6 of the APA explicitly requires resolution any and all debts and claims, either known or unknown, that arise under Seton's Medi-Cal Provider Agreement before the sale closes, that the Department has against both the Debtors or, under successor liability, against AHMC. In effect, this provision

1 encompasses the resolution of the Medi-Cal overpayments to Seton in the fiscal
2 years before the closing date and the HQA Fees incurred by Seton.

3 8.6 Medicare and Medi-Cal Provider Agreements. Hospital Seller shall
4 enter into . . . a settlement agreement with the California Department of
5 Health Care Services (“DHCS”) which has the effect of allowing
6 Hospital Seller to transfer its Medi-Cal provider agreements in
7 accordance with the IMA and Leaseback Agreement, which such
8 settlement agreements shall result in: (i) resolution of all outstanding
9 financial defaults under Hospital Seller’s Medicare and Medi-Cal
10 provider agreements, and (ii) *full satisfaction, discharge, and release*
11 *of any claims under the Medicare or Medi-Cal provider agreements,*
12 *whether known or unknown, that CMS or DHCS, as applicable, has*
13 *against Hospital Seller or Purchaser for monetary liability arising*
14 *under the Medicare or Medi-Cal provider agreements before the*
15 *Effective Time*; provided, however, that Purchaser acknowledges that it
16 will succeed to the quality history associated with the relevant Medicare
17 or Medi-Cal provider agreements assigned and shall be treated, for
18 purposed of survey and certification issues as if it is Hospital Seller and
19 no change of ownership occurred.

20 APA, ECF No. 4360, at p. 94/150 (emphasis added).

21 Despite the significance of issues related to the transfer of Seton’s Medi-Cal
22 Provider Agreement to effectuate the sale, the proposed Disclosure Statement fails
23 to even reference the status of the resolution of the Department’s claim for Seton’s
24 Medi-Cal debt as it relates to the transfer of Seton’s Medi-Cal Provider Agreement.
25 Such resolution could materially impact the sale of Seton and must be disclosed as
26 such in the Disclosure Statement.

27 In that regard, the Department requested an escrowed amount of \$150,000
28 for 36 months (Department’s Objection and Response to the sale of Seton, ECF No.
4891) to cover Seton’s Medi-Cal overpayments through Fiscal Year 2020-2021. If
a fixed amount could be agreed upon regarding the Debtors’ reimbursement of
Seton’s Medi-Cal overpayments through Fiscal Year 2020-2021, to be paid upon
closing, no money will need to be escrowed. The negotiation remains ongoing
regarding the reimbursement of Seton’s Medi-Cal overpayment and payment of
Seton’s other Medi-Cal debts. Pursuant to the APA for the sale of Seton, the

1 Hospital Quality Assurance (HQA) Fee debt incurred by Seton will be fully paid
2 between the Debtors and buyer, AHMC Healthcare, Inc.

3 **B. The Sale of St. Francis Is Conditioned upon an Agreement with**
4 **the Department or Resolution of the Department's Claim**

5 Similarly, the APA for the sale of St. Francis mandates resolution of St.
6 Francis's Medi-Cal debts and issues related to the transfer of St. Francis's Medi-Cal
7 Provider Agreement before the sale closing. Paragraph 4.5 of the APA states:

8 4.5 Medicare and Medi-Cal Enrollment. Sellers shall make
9 commercially reasonable efforts to expeditiously enter into settlement
10 agreements with the Centers for Medicare and Medicaid Services
11 ("CMS"), with respect to the Medicare Provider Agreement, and the
12 California Department of Health Care Services ("DHCS"), with respect
13 to the Medi-Cal Provider Agreement or, alternatively, obtain
14 Bankruptcy Court rulings that the Medicare Provider Agreement and/or
15 the Medi-Cal Provider Agreement may be transferred without the
16 consent of CMS or DHCS, as applicable, free and clear of
17 Encumbrances and Excluded Liabilities and without successor liability,
18 to enable such agreements to be assigned to Purchaser. Between the
19 Closing Date and the Licensure Date, Purchaser may bill and collect for
20 patient services under Seller's health plan agreements, pursuant to the
21 terms of the IMA and Leaseback Agreement.

22 APA, § 4.5, ECF No. 4471, at p. 88/110 (original bold).

23 Despite the significance of the Department's claims relative to the sale of St.
24 Francis, the proposed Disclosure Statement does not even reference the status of the
25 resolution of the Department's claim for St. Francis's Medi-Cal debts as its relates
26 to the transfer of St. Francis's Medi-Cal Provider Agreement. Such resolution
27 could materially impact the sale of St. Francis and must be disclosed as such in the
28 Disclosure Statement.

In that regard, the Department requested an escrowed amount of \$39 million
for 36 months (Department's Objection and Response to the sale of St. Francis,
ECF No. 4892) to cover St. Francis's Medi-Cal overpayments through Fiscal Year
2020-2021. If a fixed amount could be agreed upon by the parties for the Debtors'
reimbursement of St. Francis's Medi-Cal overpayments through Fiscal Year 2020-
2021, no money will need to be escrowed. The negotiation remains ongoing

1 regarding the reimbursement of St. Francis's Medi-Cal overpayment. Pursuant to
2 the APA for the sale of St. Francis, the HQA Fee debt incurred by St. Francis will
3 be fully paid between the Debtors and buyer, Prime Healthcare Services, Inc.

4 **II. THE PROPOSED DISCLOSURE STATEMENT CONTAINS ERRONEOUS**
5 **FACTS**

6 Page 39 of the proposed Disclosure Statement states that the Department had
7 not appealed this Court's prior ruling with regard to the transfer of the Medi-Cal
8 Provider Agreements related to the sale of St. Vincent Medical Center (St.
9 Vincent), Seton, and St. Francis to SGM. Proposed Discl. Stmt. 49, ECF No. 4880.
10 The Debtors also added, in footnote 6 of the proposed Disclosure Statement, that
11 the Department voluntarily dismissed its appeal "upon being rendered moot by
12 SGM's failure to close the SGM Sale." *Id.*

13 The Debtors' representation is false. The Department's dismissed its appeal
14 only because of this Court's Order Approving Stipulation Re: Assumption and
15 Assignment of Medi-Cal Provider Agreement to SGM. Order, ECF No. 3787.
16 Through this Order, the Court vacated its Memorandum of Decision (ECF No.
17 3146) and Order Authorizing Debtors to Sell Medi-Cal Provider Agreements, Free
18 and Clear of Interests Asserted by the California Department of Health Care
19 Services, Pursuant to 11 U.S.C. §§ 363(b) and (f)(5) (ECF No. 3372).

20 Because of the clear error, the Debtors must revise Section V(H)(2) of the
21 proposed Disclosure Statement to delete its misrepresentation of the Department's
22 appeal with regard to the transfer of St. Vincent's, Seton's and St. Francis's Medi-
23 Cal Provider Agreements to SGM, in a sale that has since failed.

24 **CONCLUSION**

25 The proposed Disclosure Statement and Plan must be revised to correct the
26 errors and omissions noted in the Department's objections herein.

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1 Dated: June 22, 2020

Respectfully submitted,

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: California Office of the Attorney General, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

A true and correct copy of the foregoing document entitled:

CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S OBJECTIONS TO DEBTORS' PROPOSED DISCLOSURE STATEMENT AND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **June 23, 2020**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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2. SERVED BY UNITED STATES MAIL:

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **June 23, 2020**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

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3. SERVED BY OVERNIGHT MAIL AND ELECTRONIC MAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **June 23, 2020**, I served the following persons and/or entities by overnight mail and electronic mail as follows.

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4. SERVED BY PERSONAL DELIVERY: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **June 23, 2020**, I served the following persons and/or entities by personal delivery as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles
United States Bankruptcy Court
255 East Temple Street
Courtroom 1568
Los Angeles, CA 90012

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

June 23, 2020
Date

Valerie Thompson
Printed Name

/s/ Valerie Thompson
Signature