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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA (LOS ANGELES DIVISION)**

10 In re
11 VERITY HEALTH SYSTEMS OF
CALIFORNIA, INC., *et al.*,
12 Debtor and Debtor In Possession.
13 Affects All Debtors
14 Affects Verity Health System of California, Inc.
15 Affects O'Connor Hospital
16 Affects Saint Louise Regional Hospital
17 Affects St. Francis Medical Center
18 Affects St. Vincent Medical Center
19 Affects Seton Medical Center
20 Affects O'Connor Hospital Foundation
21 Affects Saint Louise Regional Hospital
Foundation
22 Affects St. Francis Medical Center of Lynwood
Medical Foundation
23 Affects St. Vincent Foundation
24 Affects St. Vincent Dialysis Center, Inc.
25 Affects Seton Medical Center Foundation
26 Affects Verity Business Services
27 Affects Verity Medical Foundation
28 Affects Verity Holdings, LLC
 Affects De Paul Ventures, LLC
 Affects De Paul Ventures - San Jose Dialysis,
LLC

Debtors and Debtors In Possession.

Lead case no.: 2:18-bk-20151-ER

Jointly administered with:
Case no. 2:18-bk-20162-ER
Case no. 2:18-bk-20163-ER
Case no. 2:18-bk-20164-ER
Case no. 2:18-bk-20165-ER
Case no. 2:18-bk-20167-ER
Case no. 2:18-bk-20168-ER
Case no. 2:18-bk-20169-ER
Case no. 2:18-bk-20171-ER
Case no. 2:18-bk-20172-ER
Case no. 2:18-bk-20173-ER
Case no. 2:18-bk-20175-ER
Case no. 2:18-bk-20176-ER
Case no. 2:18-bk-20178-ER
Case no. 2:18-bk-20179-ER
Case no. 2:18-bk-20180-ER
Case no. 2:18-bk-20181-ER

Chapter 11 cases
Hon. Ernest M. Robles

**OBJECTION OF CALIFORNIA
ATTORNEY GENERAL TO
CONFIRMATION OF "SECOND
AMENDED JOINT CHAPTER 11 PLAN
OF LIQUIDATION (DATED JULY 2,
2020) OF THE DEBTORS, THE
PREPETITION SECURED CREDITORS,
AND THE COMMITTEE" [DOC. 4993]**

Hearing Date and Time:

Date: August 12, 2020
Time: 10:00 a.m.
Location: United States Bankruptcy Court
Courtroom 1568



255 E. Temple Street
Los Angeles, CA 90012

Xavier Becerra, Attorney General of the State of California (the "Attorney General"), hereby objects to the *Second Amended Joint Chapter 11 Plan of Liquidation (dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Dkt. 4993] (the "Plan") filed by the above-captioned debtors (collectively, the "Debtors"). This objection is filed pursuant to FRBP 3020(b)(1) and the *Notice of (I) Approval of the Disclosure Statement, (II) Deadline for Voting on the Plan, (III) Hearing to Consider Confirmation of the Plan, (IV) Deadline for Filing Objections to Confirmation of the Plan, and (V) Deadline for Filing Administrative Expense Claims* (such notice in the form attached as Exhibit "A" to a reply brief [Doc. 4976] filed by the Debtors, and approved by the Court by an order [Doc. 4997] entered July 2, 2020). In support of this objection, the Attorney General respectfully states as follows:

I. The dispute over the Attorney General's conditions to the St. Francis sale will be resolved by motion practice in this Court—not by confirmation of the Plan.

As the Court is aware, the Debtors seek to sell one of their hospitals, St. Francis Medical Center ("St. Francis"), to Prime Healthcare Services, Inc. ("Prime"). The Attorney General, pursuant to California law, has conditioned his consent to that sale. The Debtors want the sale to proceed "stripped" of certain of those conditions, and, on Monday, July 27, filed an emergency motion (the "Emergency Motion" [Doc. 5199]),¹ making arguments under federal and state law to achieve that goal. The Court has set the Emergency Motion for hearing on shortened time, on August 12 at 10:00 a.m. See *Order Setting Hearing on Emergency Motion for Entry of an Order Enforcing the Order Authorizing the Sale to Prime Healthcare Services, Inc.* [Doc. 5206].

¹ In full, the *Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Prime Healthcare Services, Inc.; (II) Finding That the Sale is Free and Clear of Additional Conditions; (III) Finding That the Attorney General Abused His Discretion in Imposing Additional Conditions on the St. Francis Medical Center Sale; and (IV) Granting Related Relief.*

1 In their disclosure statement [Doc. 4994], the Debtors recognize that failure to close the sale
2 of St. Francis is a “Risk Factor[] Regarding the Plan.” Specifically, they explain that:

3 Section 12.2 of the Plan provides that the Effective Date is conditioned on the closing of the
4 [St. Francis] Sale . . . , and the Plan will not be feasible if the [St. Francis] Sale . . . does not
5 close because the sale proceeds are needed to fund the Plan. Of particular note, the [St.
6 Francis] Sale . . . not yet been approved by the Attorney General The Debtors
7 anticipate that the sale[] will close if the Attorney General approves the [St. Francis] Sale . .
8 . with conditions substantially similar to those set forth in Exhibit 5.8(c) of the SFMC Asset
Purchase Agreement If the conditions are not substantially similar to those set forth in
the asset purchase agreements and . . . the [St. Francis] Sale . . . will not close based on
those conditions, the Debtors will file a motion requesting the Court enforce the order and
the original conditions under § 363.

9 [Doc. 4994, at 119-120.] As set out above, the Debtors have indeed filed a section 363 motion
10 (the Emergency Motion), set for hearing at the same time as the confirmation hearing on the Plan.

11 In short, the Debtors recognize that, even if the Plan is confirmed, the Effective Date may
12 not occur, and the Plan will not be feasible, if the sale of St. Francis is not consummated on the
13 terms agreed to by the Debtors and Prime (the latter as purchaser of St. Francis). And that result
14 may or may not occur, depending on the outcome of litigation between the Debtors and the
15 Attorney General—a process *distinct* from Plan confirmation, though its outcome may *affect* Plan
16 feasibility.

17 For analogous reasons, the Attorney General and the Debtors have, throughout this case,
18 routinely stipulated that the entry of various orders *related* to the sale of St. Francis (and the
19 Debtors’ other remaining hospital, Seton)—e.g., sale orders, the disclosure statement—would
20 have no effect on the separate matter of Attorney General’s review of the sale and, if applicable,
21 the Court’s review of the Attorney General’s decision after such review. Most recently, for
22 example, the parties entered such a stipulation, approved by the Court, and then incorporated into
23 the St. Francis sale order, stating that:

24
25 The California Attorney General, the Debtors, the Consultation Parties (as defined in the
26 Bidding Procedures Order) and Prime, reserve all rights, arguments and defenses
27 concerning the California Attorney General’s authority, if any, to review the sale under
28 California Corporations Code §§ 5914-5924 and California Code of Regulations on
Nonprofit Hospital Transactions—Title 11, Chapter 15, § 999.5, and any conditions issued
thereto. Notwithstanding any provision to the contrary in the APA or the Sale Order,
nothing in the APA or this Sale Order shall limit or be construed as a waiver of the

1 Attorney General’s statutory or regulatory authority or other rights or defenses, or a waiver
2 of the Debtors’ statutory or other rights or defenses.

3 [Doc. 4511 (St. Francis sale order), ¶ 38.] One thing the Debtors and Attorney General could
4 agree on was that, with respect to St. Francis, the APA itself and the Sale Order would have no
5 effect on the Attorney General’s conditions or on any challenge to them by the Debtors—the
6 latter was a separate matter.

7 For the same reason, the Debtors and the Attorney General, incorporating by reference the
8 language set out above, stipulated on June 25 that “any order approving the Disclosure Statement
9 (as may be amended or modified)” would “include the following provision: Nothing in this Order
10 or the Disclosure Statement shall modify or amend paragraph 38 of the [St. Francis] Sale Order . .
11 . which shall remain in full force and effect.” [Doc. 4951 (June 25 stipulation re disclosure
12 statement), at 2-3.] The Court, having approved the stipulation, ordered on July 2 that it “be
13 included in the Amended Disclosure Statement and in any order approving the Amended
14 Disclosure Statement.” [Doc. 4991, at 8; see also Doc. 5030 (July 4 order approving disclosure
15 statement), at ¶ 34 (“Nothing contained in this Order or the Disclosure Statement shall modify or
16 amend paragraph 38 of the [St. Francis] Sale Order . . . which remain[s] in full force and effect.”).

17 **II. The Debtors refuse to enter a similar stipulation with respect to Plan confirmation.**

18 One would expect, then, that a similar stipulation would be a matter of course with respect
19 to Plan confirmation. After all, the dispute over the Attorney General’s conditions with respect to
20 the sale of St. Francis will be decided after motion practice and a hearing, wholly distinct from
21 issues of Plan confirmation. But the Debtors have declined to do so.

22 This creates a problem. The Plan contains language that could be argued to interfere with
23 the orderly resolution by the Court of the existing dispute over the validity of the Attorney
24 General’s conditions. Section 13 of the Plan, for example, addresses the “Effect of Confirmation,”
25 and runs to five single-spaced pages.

26 Section 13.1, for example, includes provisions for revesting of the “Operating Assets”—
27 which include St. Francis—in the Debtors, after the Effective Date, “free and clear” of
28 “interests”. And though “Effective Date” is defined at section 12.2 to include closing of the St.

1 Francis sale to Prime, section 12.3 implies—and the Debtors have in the past relied on the
2 “implications” of a court order in this case—that that condition precedent could be waived by the
3 Plan Proponents with the consent of the relevant secured creditors. The Debtors, if they do not
4 prevail in the pending litigation over the Attorney General’s conditions, could argue that St.
5 Francis already revested in them, free and clear of those conditions, following confirmation.

6 Similarly, section 13.5(a) provides the Holder of a “Claim,” on confirmation, releases the
7 Debtors not only from the Claim, but also from any demand based on post-petition transactions or
8 occurrences. Will the Debtors argue in the future that the Attorney General’s conditions, or right
9 to impose conditions, was a Claim subject to this release? One would think not, but there is no
10 assurance.

11 In the same vein, the “General Injunction” provided for at section 13.6(a) of the Plan could
12 be argued by the Debtors’ capable and creative counsel to apply to the Attorney General’s
13 conditions, or right to impose those conditions.

14 This is not an exhaustive list of problems, because there can be no such list: the length and
15 breadth of the Plan’s releases, injunctions, and the like, whether at sections 12 and 13 of the Plan
16 or elsewhere, render them open to interpretation and opportunities for litigation. That is why, until
17 now, both the Attorney General and the Debtors have seen the wisdom of stipulating that disputes
18 between them, regarding the Attorney General’s conditions on the sale of assets, are separate and
19 distinct from other proceedings in this case, and that other proceedings have no effect on the
20 resolution of disputes over those conditions—without prejudice to either side’s arguments in such
21 disputes.

22 **III. Conclusion.**

23 For the reasons stated above, the Attorney General objects to the Plan in its current form,
24 and respectfully requests that the Plan not be confirmed unless and until it (or the confirmation
25 order) contains a provision essentially identical to the provisions previously employed by the
26 parties and approved by the Court, and which should be uncontroversial:

27 The California Attorney General and the Debtors reserve all rights, arguments and defenses
28 concerning the California Attorney General’s authority, if any, to review the sale under
California Corporations Code §§ 5914-5924 and California Code of Regulations on

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Nonprofit Hospital Transactions—Title 11, Chapter 15, § 999.5, and any conditions issued thereto. Notwithstanding any provision to the contrary in [the Plan or any confirmation order], nothing in the [Plan or any confirmation order] shall limit or be construed as a waiver of the Attorney General’s statutory or regulatory authority or other rights or defenses, or a waiver of the Debtors’ statutory or other rights or defenses.

Dated: July 30, 2020

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California

s/David K. Eldan
DAVID K. ELDAN
Deputy Attorney General
Attorneys for Attorney General, State of California

CERTIFICATE OF SERVICE

Case **In re: VERITY HEALTH** BKY Case No. **2:18-bk-20151-ER**
Name: **SYSTEMS OF CALIFORNIA, INC.**
ET AL.

I hereby certify that on **July 30, 2020** I *electronically filed* the following documents with the Clerk of the Court by using the CM/ECF system:

**OBJECTION OF CALIFORNIA ATTORNEY GENERAL TO
CONFIRMATION OF 'SECOND AMENDED JOINT CHAPTER 11 PLAN
OF LIQUATION (Date July 2, 2020) OF THE DEBTORS, THE
PREPETITION SECURED CREDITORS AND THE COMMITTEE'.**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **July 30, 2020**, I further certify that all the participants in the case are registered CM/ECF users as follows:

SEE ATTACHED SERVICE 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 **July 30, 2020**, at Los Angeles, California.

Cynthia D. Lira-Gomez

Declarant

/s/ Cynthia D. Lira-Gomez

Signature

CERTIFICATE OF SERVICE

Electronic Notification

The following parties are currently on the list to receive email notice/service for this case.

(i) Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017
(Attn: Tania M. Moyron (tania.moyron@dentons.com));

(ii) Milbank LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067
(Attn: Mark Shinderman (mshinderman@milbank.com));

(iii) Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111
(Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com));

(iv) McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606
(Attn: Nathan F. Coco and Megan Preusker (ncoco@mwe.com; mpreusker@mwe.com));

(v) Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402
(Attn: Clark Whitmore (clark.whitmore@maslon.com));

(vi) Jones Day, 250 Vesey Street, New York, NY 10281
(Attn: Bruce Bennett, Benjamin Rosenblum, and Peter Saba
(bbennett@jonesday.com, brosenblum@jonesday.com, psaba@jonesday.com));

(vii) U.S. Trustee, Office of the United States Trustee, 915 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017
(Attn: Hatty K. Yip (hatty.yip@usdoj.gov)).