10:00 AM

2:18-24622 Yvonne K. Lausch **Chapter 7**

#1.00 Bond Payments - International Sureties, LTD

Hearing re [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: $3,250 [*see* Doc. No. 44]

Total Expenses: $86.20 [*see id.*]

Bond Payments: $10.68 (previously disbursed)

Grobstein Teeple LLP: $1,000 (previously disbursed by court order [Doc. No. 40])

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The chapter 7 trustee shall submit a conforming order within seven days of the hearing.

Party Information

Debtor(s):

Yvonne K. Lausch	Represented By Jeffrey S Shinbrot

Trustee(s):

Howard M Ehrenberg (TR)	Pro Se

10:00 AM

2:18-24622 Yvonne K. Lausch **Chapter 7**

#2.00 APPLICANT: Accountant for Trustee (Other Firm) - Grobstein Teeple LLP

Hearing re [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/11/2020

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Yvonne K. Lausch	Represented By Jeffrey S Shinbrot

Trustee(s):

Howard M Ehrenberg (TR)	Pro Se

10:00 AM
2:18-24622 Yvonne K. Lausch **Chapter 7**

#3.00 APPLICANT: Trustee - Howard M. Ehrenberg

Hearing re [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/11/2020

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Yvonne K. Lausch — Represented By
Jeffrey S Shinbrot

Trustee(s):

Howard M Ehrenberg (TR) — Pro Se

10:00 AM

2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#4.00 Hearing RE [4285] Objection regarding transfer of the SFMC **Medicare** Provider Agreement.

fr. 5-13-20

fr. 6-10-20

FR. 7-1-20

fr. 7-15-20

FR. 7-29-20

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 8-4-20 [D.E. 5349]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,	Represented By Samuel R Maizel John A Moe II Tania M Moyron Claude D Montgomery Sam J Alberts Shirley Cho Patrick Maxcy Steven J Kahn Nicholas A Koffroth

10:00 AM
2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#5.00 Hearing re [4568] Hearing Re Issues Regarding Transfer of Seton **Medicare** Provider Agreement

fr. 5-13-20

fr. 6-10-20

FR. 7-1-20

fr. 7-15-20

FR. 7-29-20

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 8-4-20 [D.E. 5349]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California, Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth

10:00 AM

2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#6.00 Hearing
RE: [5124] Debtors Motion to Approve Compromise Among St. Vincent Medical Center, Central Health Plan of California, Inc., Central Health MSO, Inc., and Seoul Medical Group, Inc.

Docket 5124

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

For the reasons set forth below, the Motion is **GRANTED** in its entirety.

Pleadings Filed and Reviewed:

1) Debtors' Notice and Motion to Approve Compromise Among St. Vincent Medical Center, Central Health Plan of California, Inc., Central Health MSO, Inc., and Seoul Medical Group, Inc. [Doc. No. 5124] (the "Motion")
   a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 5118, 5119, 5120, 5124, 5125, 5128, 5129, 5130, 5131, 5133, 5135 and 5137 [Doc. No. 5334]
2) Creditor Seoul Medical Group Inc.'s Notice of Joinder to [the Motion] [Doc. No. 5265]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health System of California, Inc. ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' case are being jointly administered. The Debtors seek approval of a settlement agreement (the "Settlement Agreement") between Debtor St. Vincent Medical Center ("SVMC"), on the one hand, and Central Health Plan of California, Inc. ("CHP"), Central Health MSO, Inc.

10:00 AM
CONT... Verity Health System of California, Inc. Chapter 11

("CHMSO") and Seoul Medical Group, Inc. ("SMG"), on the other hand. No opposition to the Motion is on file.

A. Background

SVMC and CHP are parties to a *Full Risk Hospital Services Agreement* dated May 1, 2017 (the "Full Risk Agreement"), under which CHP agreed to pay monthly capitation payments to SVMC on a per member/per month basis for those enrollees of a certain Medicare plan offered by CHP who were assigned a primary care physician at SMG (the "Capitated Members"). Under the terms of the Full Risk Agreement, SVMC assumed financial responsibility for certain facility services rendered to Capitated Members in exchange for per member/per month payments from CHP.

SVMC and SMG were parties to a *Healthcare Services Risk Sharing Agreement* dated May 1, 2017 (the "Risk-Sharing Agreement"), under which SMG agreed to coordinate and manage the use of facility services rendered by SVMC to Capitated Members of SMG in exchange for compensation as set forth in the Risk-Sharing Agreement.

SVMC and CHMSO were parties to a *Management Services Agreement* dated May 1, 2017 (the "Management Agreement") under which CHMSO agreed to administer claims under the Full Risk Agreement and prepare risk pool reports in exchange for compensation as set forth in the Management Agreement.

On August 28, 2018, CHP notified SVMC that, effective August 24, 2018, CHP and SMG had mutually agreed to assign the financial responsibility for the Capitated Members from SVMC back to CHP. CHP ceased making per member/per month payments to SVMC under the Full Risk Agreement for the months of September through December 2018, and thereafter.

On September 4, 2018, CHP notified SVMC that, effective August 31, 2018, CHP would terminate the Full Risk Agreement. CHP later retracted this notice of termination but maintained that it had withdrawn, and reassumed, the delegation of responsibility to SVMC under the Full Risk Agreement.

SVMC alleges that (1) SMG breached the Risk-Sharing Agreement and wrongfully denied SVMC its anticipated per member/per month payments and ensuing share of risk pool surpluses for the months of September through December 2018; that (2) CHP breached the Full Risk Agreement by depriving SVMC of its anticipated per member/per month payments and ensuing share of risk pool surpluses for the months of September through December 2018; and that (3) CHP wrongfully interfered with SVMC's rights under the Risk-Sharing Agreement (collectively, the

"SVMC Claims"). SMG and CHP deny that they breached or interfered with their respective agreements with SVMC and dispute SVMC's allegation that it suffered damages.

On March 29, 2019, CHP filed a general unsecured claim against SVMC in the amount of not less than $4,539,112.68 (the "CHP POC"), arising from claims made, or to be made, against CHP on account of obligations incurred by SVMC to third-party providers under the Full Risk Agreement. SVMC disputes the allowability of the CHP POC.

On May 22, 2019, SMG filed two identical general unsecured claims against SVMC, each in the amount of $4,008,832.37, representing the amount SMG asserts is owed to it by SVMC under the Risk-Sharing Agreement plus attorneys' fees (the "SMG POCs"). SVMC disputes the allowability of the SMG POCs.

On October 7, 2019, SMG asserted an administrative expense claim in the amount of $4,096,005.72, representing the amount SMG assert it is owed by SVMC under the Risk-Sharing Agreement, plus attorneys' fees and costs (the "SMG Admin Claim"). SVMC disputes the allowability of the SMG Admin Claim.

On October 9, 2018, CHMSO filed a general unsecured claim against SVMC in the amount of $213,835.26, for unpaid management fees allegedly incurred by SVMC in July and August 2018 under the Management Agreement, and on March 29, 2019, CHMSO filed a functionally identical claim asserting the same amount on the same grounds (the "CHMSO POCs"). SVMC disputes the allowability of the CHMSO Claims.

B. Summary of the Settlement Agreement

The Settlement Agreement resolves all claims, obligations, and liabilities between SVMC, SMG, and CHMSO arising from or related to the Full Risk Agreement, the Risk-Sharing Agreement, and the Management Agreement. The Settlement Agreement does not affect the rights and liabilities of CHP and SVMC arising from or related to a separate *Hospital Services Agreement* dated May 1, 2016 (the "FFS Agreement").

The Settlement Agreement takes effect once an entry approving the instant Motion becomes final and non-appealable (the "Effective Date"). The Settlement Agreement requires SMG and CHP to collectively deposit the sum of $450,000 with SVMC's counsel, to be held in counsel's client trust account pending the Settlement Agreement's Effective Date. Upon the Effective Date, the CHP POC, the SMG POCs, the CHMSO POCs, and the SMG Admin Claim shall be deemed withdrawn with prejudice. Under the Settlement Agreement, the Parties acknowledge that the Risk-Sharing Agreement lapsed by its terms on December 31, 2018, and the Parties agree that the Full Risk Agreement shall be deemed terminated by mutual consent and without further liability as of January 31, 2020.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Probability of Success on the Merits

Although SVMC believes that it will prevail in the prosecution of the SVMC Claims, SMG and CHP have asserted various defenses to the SVMC Claims, and SMG and CHP have counter-claims that they could attempt to assert as setoffs to the SVMC Claims. Success on the merits in excess of the amount to be paid to SVMC under the Settlement Agreement cannot be guaranteed. As a result, this factor weighs in favor of approving the Settlement Agreement.

Complexity of the Litigation

The dispute is in the pre-litigation phase. Absent settlement, additional discovery and document review will be required. Litigation of the issues would likely require the introduction of expert testimony, which would prove expensive. Consequently, this factor weighs in favor of approving the Settlement Agreement.

Paramount Interests of Creditors

No creditors have objected to the Settlement Agreement, and the Settlement Agreement provides a recovery of $450,000 for the estates. This factor weighs in favor of approving the Settlement Agreement.

Difficulties to Be Encountered in the Matter of Collection

This factor does not apply.

III. Conclusion

Based upon the foregoing, the Settlement Agreement is **APPROVED** and the Motion is **GRANTED** in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,	Represented By Samuel R Maizel John A Moe II Tania M Moyron Claude D Montgomery Sam J Alberts Shirley Cho Patrick Maxcy Steven J Kahn Nicholas A Koffroth Kerry L Duffy

10:00 AM

2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#7.00 HearingRE: [5129] Motion to Reject Lease or Executory Contract Debtors Notice Of Motion And Motion To Reject, Pursuant To 11 U.S.C. § 365(a), Risk-Sharing Agreement With Healthcare LA; Memorandum Of Points And Authorities And Declaration Of Richard G. Adcock In Support Thereof

Docket 5129

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

1) Debtors' Notice of Motion and Motion to Reject, Pursuant to 11 U.S.C. § 365(a), Risk-Sharing Agreement with Healthcare LA [Doc. No. 5129] (the "Motion")
    a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 5118, 5119, 5120, 5124, 5125, 5128, 5129, 5130, 5131, 5133, 5135 and 5137 [Doc. No. 5334]
2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health System of California, Inc. ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' case are being jointly administered.

The Debtors move to reject the *Healthcare Services Risk Sharing Agreement* dated March 1, 2013 (the "Agreement") between Debtor St. Francis Medical Center ("SFMC") and HealthCare LA (the "Group"). Under the Agreement, the Group coordinates and manages the use of hospital services delivered by SFMC to patients with a primary care physician at the Group, in exchange for compensation as set forth in the Agreement. Prime Healthcare Services, Inc. ("Prime"), the purchaser of SFMC, has declined the assumption and assignment of the Agreement. The Debtors assert that rejection is warranted because after the closing of the Prime Sale, the Debtors will no longer provide medical services at SFMC to patients with a primary care physician at the Group.

II. Findings and Conclusions

Section 365(a) provides that the Debtors, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract or unexpired lease:

> In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." …
>
> Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. *See Navellier v. Sletten,* 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Castetter,* 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang,* 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

The Court finds that the Debtors have shown sufficient cause to reject the Agreement. In view of the sale of the assets to which the Agreement pertains, the Agreement provides no benefit to the estates.

The deadline for the Group to file a proof of claim arising from the rejection of the Agreement, pursuant to Bankruptcy Rule 3002(c)(4), shall be **September 28, 2020**

10:00 AM
CONT... Verity Health System of California, Inc. **Chapter 11**

(the "Rule 3002(c)(4) Claims Bar Date"). Debtors shall provide notice of the Rule 3002(c)(4) Claims Bar Date so that it is actually received by the Group by no later than **August 21, 2020**. Debtors shall file a proof of service of such notice by no later than **August 21, 2020**.

Notwithstanding the rejection of the Agreement, SVMC's right to complete the reconciliation of the risk pools and to demand the repayment by the Group to SVMC of its share of a deficit, if any, is preserved.

III. Conclusion

Based upon the foregoing, the Motion is **GRANTED** in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,	Represented By Samuel R Maizel John A Moe II Tania M Moyron Claude D Montgomery Sam J Alberts Shirley Cho Patrick Maxcy Steven J Kahn Nicholas A Koffroth Kerry L Duffy

10:00 AM

2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#8.00 Hearing re [4993] Second Amended Joint Chapter 11 Plan Of Liquidation (Dated July 2, 2020) Of The Debtors, The Prepetition Secured Creditors,And The Committee

Docket 0

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

For the reasons set forth below, the outstanding objections to confirmation of the Plan are **OVERRULED**, and the Plan is **CONFIRMED**.

Pleadings Filed and Reviewed:

1) Memorandum of Law in Support of Confirmation of Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and Prepetition Secured Creditors [Doc. No. 5385]
   a) Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee [Doc. No. 4993] (the "Plan")
   b) Disclosure Statement Describing Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee [Doc. No. 4994]
   c) Order Granting Joint Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Amended Joint Plan; (IV) Setting Administrative Claims Bar Date; and (V) Granting Related Relief [Doc. No. 4997]
   d) Declaration of Service of Solicitation Materials [Doc. No. 5346]

10:00 AM

CONT... **Verity Health System of California, Inc.** **Chapter 11**

e) Certification of Andres A. Estrada With Respect to the Tabulation of Votes on the Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee [Doc. No. 5371] (the "Voting Declaration")
f) Notice of Certain Plan Supplements to the [Plan] [Doc. No. 5443]

2) Confirmation Objections:
   a) Objection of Cigna Entities to [Plan] [Doc. No. 5231]
      i) Notice of Resolution of Objection of Cigna Entities to [Plan] [Doc. No. 5396]
   b) Creditor Seoul Medical Group Inc.'s Notice of Reservation of Rights to Objection to the Debtors' Confirmation of Their [Plan] [Doc. No. 5268]
   c) Toyon Associates, Inc.'s Limited Objection to Confirmation [Doc. No. 5281]
      i) Toyon Associates, Inc.'s Objection to Debtors' Evidence in Support of Confirmation [Doc. No. 5407]
   d) Limited Objection and Reservation of Rights of Infor (US), Inc. with Respect to [the Plan] [Doc. No. 5282]
   e) Objection of Strategic Global Management, Inc. to Confirmation of [Plan] [Doc. No. 5288]
      i) Strategic Global Management, Inc.'s Response to "Memorandum of Law in Support of Confirmation of the [Plan]" [Doc. No. 5448]
      ii) Notice of Administrative Expense Claim [filed by SGM] [Doc. No. 5197]
   f) Objection of Health Net of California, Inc. to Confirmation of Plan [Doc. No. 5292]
   g) Objection of California Attorney General to Confirmation of [Plan] [Doc. No. 5294]
   h) UnitedHealthcare Ins. Company's Objection to Confirmation [Doc. No. 5326]
   i) Limited Objection of SCAN Health Plan to Confirmation of Plan [Doc. No. 5337]
   j) Applecare Medical Group, Inc., Applecare Medical Group St. Francis, Inc., and Applecare Medical Management, LLC's Objection to Confirmation of [Plan] [Doc. No. 5339]
      i) AppleCare Medical Group, Inc., AppleCare Medical Group, St. Francis Inc., and AppleCare Medical Management LLC's Amended Motion for Allowance of an Administrative Expense Claim [Doc. No. 5445]
   k) GRM Information Management Services Inc.'s Limited Objection to Plan [Doc. No. 5341]

10:00 AM
CONT... Verity Health System of California, Inc. Chapter 11

l) Long Beach Memorial Medical Center's Limited Objection to Confirmation of [Plan] [Doc. No. 5342]
m) Objection of Premier, Inc. to Confirmation of [Plan] [Doc. No. 5343]
n) Blue Shield's Conditional Joinder, Limited Objection, or Reply to Objections to Confirmation of [Plan] [Doc. No. 5417]

3) Reply papers:
   a) Omnibus Reply to Certain Objections to Confirmation of [the Plan] [Doc. No. 5419]
   b) Omnibus Reply to Certain Objections to Confirmation of [the Plan] [Doc. No. 5425]
   c) Supplement Regarding Proposed Resolution of Objections Asserted by Certain Payors Re Confirmation of [the Plan] [Doc. No. 5455]
   d) Debtors' (I) Request to Strike or, in the Alternative, Overrule Strategic Global Management, Inc.'s Unauthorized "Surreply" in Support of SGM's Confirmation Objection and (II) Response to Toyon Associates, Inc.'s Evidentiary Objections to the Declaration of Peter C. Chadwick in Support of the Confirmation Brief [Doc. No. 5456]
4) Stipulations resolving issues:
   a) Order Approving Stipulation Among Debtors, Creditors' Committee and Aetna Life Insurance Company for Resolution of Plan Objection [Doc. No. 5350]
      i) Stipulation Among Debtors, Creditors' Committee and Aetna Life Insurance Company for Resolution of Plan Objection [Doc. No. 5338]
   b) Stipulation Between the Debtors and Swinerton Builders Resolving Informal Confirmation Objection [Doc. No. 5463]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California, Inc. ("VHS") and certain affiliated entities (collectively, the "Debtors") each filed voluntary Chapter 11 petitions. **[Note 1]** The Debtors' cases are being jointly administered.

Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that, on the Petition Date, operated six acute care hospitals: O'Connor Hospital ("OCH"), Saint Louise Regional Hospital ("SLRH"), St. Francis Medical Center ("SFMC"), St. Vincent Medical Center ("SVMC"), Seton Medical Center

("SMC"), and Seton Medical Center Coastside ("Seton Coastside" and, together with OCH, SLRH, SFMC, and SVMC, the "Hospitals"). SMC and Seton Coastside (collectively, "Seton") operated under one consolidated acute care hospital license.

As of the Petition Date, VHS, the Hospitals, and their affiliated entities (collectively, the "Verity Health System") operated as a nonprofit health care system in California, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, and a host of medical specialties, including tertiary and quarternary care. In 2017, the Hospitals provided medical services to over 50,000 inpatients and 480,000 outpatients.

On June 16, 2020, the Debtors, the Official Committee of Unsecured Creditors (the "Committee"), and the Prepetition Secured Creditors **[Note 2]** (collectively, the "Plan Proponents") filed the *Amended Joint Chapter 11 Plan of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Doc. No. 4879] (the "Plan") and an accompanying disclosure statement [Doc. No. 4880] (the "Disclosure Statement"). On July 2, 2020, the Court entered an order (1) approving the Disclosure Statement as containing adequate information and (2) establishing solicitation and voting procedures. Doc. No. 4997.

A. The Debtors' Prepetition Capital Structure

VHS, Verity Business Services ("VBS"), and the Hospitals are jointly obligated parties on approximately $461.4 million of outstanding secured debt, consisting of:

1) $259.4 million outstanding tax exempt revenue bonds, loaned to provide funds for capital improvements and to refinance certain tax exempt bonds previously issued in 2001 (the "2005 Revenue Bonds"); and
2) $202 million outstanding tax exempt revenue notes, issued in 2015 (the "2015 Revenue Notes") and 2017 (the "2017 Revenue Notes"), loaned for working capital purposes.

Verity Holdings, LLC ("Holdings") was created in 2016 to hold and finance the Debtors' interests in six medical office buildings whose tenants are primarily physicians and other practicing medical groups. Holdings is the borrower of approximately $66 million through two series of non-recourse financing secured by separate deeds of trust and revenue and accounts pledges, including lease rents on each medical building, pursuant to the Medical Office Building ("MOB") I Loan Agreement with Verity MOB Financing LLC ("MOB I") and MOB II Loan

Agreement with Verity MOB Financing II LLC ("MOB II") (collectively, the "MOB Financings").

B. The Failed SGM Sale and Related Litigation

On May 2, 2019, the Court entered an order authorizing the Debtors to sell SFMC, SVMC, and Seton to Strategic Global Management, Inc. ("SGM"). *See* Doc. No. 2306 (the "SGM Sale Order"). Pursuant to the Asset Purchase Agreement approved in connection with the SGM Sale (the "SGM APA"), SGM made a good-faith deposit of $30 million (the "Deposit").

On November 27, 2019, the Court entered a memorandum of decision and accompanying order rejecting SGM's allegation that the Debtors had failed to comply with certain of the conditions and obligations imposed upon them by the SGM APA, and that these alleged failures to perform had resulted in a Material Adverse Effect which relieved SGM of its obligation to close the SGM Sale. *See* Bankr. Doc. Nos. 3723 (the "Material Adverse Effect Memorandum") and 3724 (the "Material Adverse Effect Order"). The Court stated: "Article 1.3 [of the SGM APA] obligates SGM to close the sale 'promptly but no later than ten (10) business days following the satisfaction' of all conditions precedent. As all conditions precedent were satisfied on November 19, 2019, SGM is obligated to close the sale by no later than December 5, 2019." Material Adverse Effect Memorandum at 7. The Material Adverse Effect Order provided in relevant part: "Pursuant to § 1.3 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019." Material Adverse Effect Order at ¶ 1.

On December 3, 2019, SGM appealed the Material Adverse Effect Order, along with two other orders pertaining to the SGM Sale (the "Appeals," and the orders appealed, the "Appealed Orders"). SGM did not close the SGM Sale on December 5, 2019, or thereafter. The Debtors terminated the SGM APA, effective as of December 27, 2019. *See* Doc. No. 3899.

On May 14, 2020, the District Court dismissed the Appeals as moot. *See* Case No. 2:19-cv-10352-DFS, Doc. No. 59. On June 11, 2020, the District Court vacated the Appealed Orders. *See* Case No. 2:19-cv-10352-DFS, Doc. No. 65. On July 8, 2020, the Debtors appealed the vacatur of the Appealed Orders to the Ninth Circuit. *See* Case No. 2:19-cv-10352-DFS, Doc. No. 66.

On January 3, 2020, the Debtors commenced an adversary proceeding (the "Adversary Proceeding") against SGM and others, alleging, *inter alia*, breaches of the SGM APA and promissory fraud. On March 5, 2020, the District Court withdrew the reference to the Adversary Proceeding. *See* Case No. 2:20-cv-00613-DSF, Doc. No. 23.

On July 10, 2020, SGM filed a counterclaim against the Debtors (the "SGM Counterclaim"). *See* Case No. 2:20-cv-00613, Doc. No. 41. Among other things, the SGM Counterclaim alleges that the Debtors (1) breached the SGM APA by failing to properly maintain the hospitals and (2) wrongfully retained the Deposit.

On August 4, 2020, the District Court held that the Debtors' First Amended Complaint against SGM and others stated claims upon which relief could be granted. *See* Case No. 2:20-cv-00613, Doc. No. 56.

C. Summary of the Plan

1. General Overview

The Plan implements a comprehensive compromise among the holders of the Secured 2005 Revenue Bond Claims, the Debtors, and the Committee. In return for the agreement by the holders of the Secured 2005 Revenue Bond Claims to accept a partial payment of their claims on the Effective Date, the Debtors will dismiss with prejudice litigation commenced by the Committee for the benefit of the Debtors against the Prepetition Secured Creditors, and waive preserved claims against Verity MOB Financing LLC and Verity MOB Financing II LLC.

The Plan creates a Liquidating Trust to collect and liquidate the Debtors' remaining assets. Holders of the Secured 2005 Revenue Bond Claims will receive a cash payment of approximately $124.2 million on the Effective Date (equal to roughly half the amount of the allowed claims). The remaining amount of the Secured 2005 Revenue Bond Claims will be satisfied through First Priority Trust Beneficial Interests to be issued by the Liquidating Trust. It is anticipated that the Allowed Secured 2005 Revenue Bond Claims will be paid in full.

As a result of the willingness of the holders of the Secured 2005 Revenue Bond Claims to receive a deferred payment of a portion of their claims, the Debtors will have sufficient cash on hand to pay on the Effective Date all allowed Administrative Claims and all other allowed secured claims.

The claims of holders of Allowed General Unsecured Claims will be satisfied through Second Priority Trust Beneficial Interests to be issued by the Liquidating Trust. It is anticipated that holders of Allowed General Unsecured Claims will receive a recovery of approximately 0.5%.

The Plan deems the Debtors substantively consolidated for the purposes of claim allowance and distribution, which treats the Debtors' assets and liabilities as if they were pooled without actually merging the Debtor entities.

2. The Plan's Classification Structure

The following table sets forth the Plan's classification structure:

Class	Designation	Impairment	Entitled to Vote
1A	Other Priority Claims	Not Impaired	No (deemed to accept)
1B	Secured PACE Tax Financing Claims	Not Impaired	No (deemed to accept)
2	Secured 2017 Revenue Notes Claims	Impaired	Yes
3	Secured 2015 Revenue Notes Claims	Impaired	Yes
4	Secured 2005 Revenue Bond Claims	Impaired	Yes
5	Secured MOB I Financing Claims	Impaired	Yes
6	Secured MOB II Financing Claims	Impaired	Yes
7	Secured Mechanics Lien Claims	Impaired	Yes
8	General Unsecured Claims	Impaired	Yes
9	Insured Claims	Impaired	Yes
10	2016 Data Breach Claims	Impaired	Yes
11	Subordinated General Unsecured Claims	Impaired	No (deemed to reject)
12	Interests	Impaired	No (deemed to reject)

The treatment of each class is as follows:

Class	Designation	Treatment
1A	Other Priority Claims	Paid in full in cash on the Effective Date

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1B	Secured PACE Tax Financing Claims	Paid in accordance with the *Order Approving Stipulation Resolving California Statewide Communities Development Authority Lien Release Pursuant to Proposed Sale of Certain of Debtors' Assets Related to Seton Medical Center* [Doc. No. 4613]
2	Secured 2017 Revenue Notes Claims	On the Effective Date, paid $42 million plus (i) accrued but unpaid postpetition interest and (ii) accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2017 Notes Trustee and the Master Trustee, less certain adjustments
3	Secured 2015 Revenue Notes Claims	On the Effective Date, paid $160 million plus (i) accrued but unpaid postpetition interest and (ii) accrued but unpaid reasonable, necessary-out-of-pocket fees and expenses of the 2015 Notes Trustee and Master Trustee, less certain adjustments
4	Secured 2005 Revenue Bond Claims	On the Effective Date, paid not less than $124.2 million. The remainder of the claims will be satisfied through the Liquidating Trust's issuance of First Priority Beneficial Trust Interests.
5	Secured MOB I Financing Claims	On the Effective Date, paid $46,363,095.90, plus (i) accrued but unpaid postpetition interest and (ii) accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing LLC
6	Secured MOB II Financing Claims	On the Effective Date, paid $20,061,919.48, plus (i) accrued but unpaid postpetition interest and (ii) accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing II LLC
7	Secured Mechanics Lien Claims	Paid in full in cash on the Effective Date
8	General Unsecured Claims	Entitled to receive Second Priority Trust Beneficial Interests, which are projected to yield a recovery of approximately 0.5%

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9	Insured Claims	On the Effective Date, entitled to receive automatic relief from the automatic stay and the injunctions provided under the Plan, for the sole and limited purpose of permitting each Holder to seek recovery before a court of competent jurisdiction from the applicable and available Insurance Policies maintained by or for the benefit of any of the Debtors. To the extent that a recovery under the Insurance Policy is insufficient to satisfy the claim, or there are no available Insurance Policies, each Holder shall be entitled to an Insured Deficiency Claim, which shall be treated as an Allowed General Unsecured Claim.
10	2016 Data Breach Claims	Entitled to receive two years of credit monitoring services
11	Subordinated General Unsecured Claims	No recovery
12	Interests	No recovery

3. Voting Results

All classes entitled to vote have accepted the Plan, as set forth in the following table:

Class	**Description**	**Ballots Cast**	**Percentage Accepting in Number**	**Percentage Accepting in Dollar Amount**
2	Secured 2017 Revenue Notes Claims	1	100%	100%
3	Secured 2015 Revenue Notes Claims	7	100%	100%
4	Secured 2005 Revenue Bond Claims	264	97.73%	99.93%
5	Secured MOB I Financing Claims	1	100%	100%
6	Secured MOB II Financing Claims	1	100%	100%

7	Secured Mechanics Lien Claims	6	100%	100%
8	General Unsecured Claims	777	94.72%	82.47%
9	Insured Claims	16	87.5%	71.43%
10	2016 Data Breach Claims	40	90%	94.01%

4. Conditions Precedent to the Effective Date

The Plan's Effective Date is the first business day after all of the following conditions have been satisfied:

1) An unstayed Confirmation Order shall have been entered by the Court, Plan at § 12.2(a);
2) The SFMC Sale shall have closed, *id.* at § 12.2(b);
3) The Seton Sale shall have closed, *id.* at § 12.2(c);
4) The Debtors shall have sufficient Cash to satisfy all payments required to be made under the Plan on the Effective Date, *id.* at § 12.2(d);
5) The Debtors shall have sufficient cash to fund the Liquidating Trust Reserves, *id.* at § 12.2(e); and
6) All documents, instruments, and agreements necessary to implement the Plan shall have been executed and delivered by the parties thereto, *id.* at § 12.2(f).

5. Post-Effective Date Governance

The following shall occur on the Effective Date:

1) The Committee shall be dissolved and the Post-Effective Date Committee shall be appointed. *Id.* at § 7.11(a)–(b). The Post-Effective Date Committee shall (i) consult and coordinate with the Liquidating Trustee as to the administration of the Liquidating Trust and the Liquidating Trust Assets; and (ii) consult and coordinate with the Liquidating Trustee as to the administration of the Post-Effective Date Debtors. *Id.* at § 7.11(c).
2) The following Debtors shall be dissolved: Verity Business Services ("VBS"), Holdings, De Paul Ventures, LLC, and De Paul Ventures—San Jose Dialysis, LLC. *Id.* at § 5.1.
3) The properly donor-restricted assets of the Saint Louise Regional Hospital Foundation and O'Connor Hospital Foundation shall be transferred pursuant to approvals to be received from the California Attorney General.

Id. at § 5.4.

4) The board members of VHS shall resign and the Post-Effective Date Board of Directors of VHS shall be appointed. *Id.* at § 5.9(a). The Post-Effective Date Board of Directors shall oversee the Liquidating Trustee in his or her capacity as president of the Post-Effective Date Debtors consistent with the terms of this Plan. *Id.* at § 5.9(b).

After the Effective Date, the following Debtors shall continue in existence: SFMC and Seton (the "Sale-Leaseback Debtors"), SLRH and OCH (the "SCC Debtors"), SVMC, St. Vincent Dialysis, and VHS (collectively, the "Post-Effective Date Debtors"). *Id.* at § 5.8.

The Sale-Leaseback Debtors shall continue in existence for the limited purposes of (i) maintaining their rights as licensees under the SFMC and Seton Hospital Licenses so Prime and AHMC may obtain their general acute care hospital licenses from the California Department of Public Health and their hospital permits from the California State Board of Pharmacy and (ii) maintaining the respective Hospital's Medicare and Medi-Cal Provider Agreements until the changes of ownership to Prime and AHMC are approved. *Id.* at § 5.8.

SVMC, St. Vincent Dialysis, and the SCC Debtors shall continue in existence for the limited purpose of receiving Medi-Cal, Medicare, and Quality Assurance Payments. *Id.* at § 5.8(c)–(d). VHS shall continue in existence to provide support services required under various interim agreements entered into by the Debtors to facilitate the Prime Sale and the AHMC Sale. *Id.* at § 5.8(e).

From and after the Effective Date, the Liquidating Trust may use and dispose of Liquidating Trust Assets, and take any of the actions consistent with the Plan and/or the Liquidating Trust Agreement without approval of the Court and free of the restrictions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, provided that the Liquidating Trust will be administered so that it qualifies as a liquidating trust under 26 C.F.R. § 301.7701–4(d). *Id.* at § 6.4. The Liquidating Trustee shall be selected by the Committee with the consent of the Master Trustee, such consent not be unreasonably withheld. *Id.* at § 6.5(a).

Unless and until the First Priority Trust Beneficial Interests are paid in full, any decisions of the Liquidating Trustee to settle, compromise, affect, waive, or release any rights of the Liquidating Trust in any assets having a nominal value of $50,000 or more shall require the consent of the Master Trustee, which consent may be withheld in its sole discretion. *Id.* at § 6.5(c).

The Liquidating Trustee is not permitted to distribute the Deposit to creditors or take any other action which would reduce or dissipate the Deposit, unless permitted by an unstayed judgment or order entered by the District Court having jurisdiction over the Adversary Proceeding.

6. Treatment of Administrative Claims Other than Professional Claims

The Plan's provisions pertaining to the treatment of Administrative Claims, other than Professional Claims, are as follows:

Each Holder of an Allowed Administrative Claim shall be paid in full in Cash on the Effective Date, unless the Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of business after the Petition Date, in which case the Holder shall be paid in the ordinary course of business. *Id.* at § 2.1. If the Administrative Claim has not been Allowed on the Effective Date, the Holder shall receive payment from the Administrative Claims Reserve. *Id.*

The Administrative Claims Reserve shall be established on the Effective Date in an amount determined by the Bankruptcy Court in order to satisfy all Administrative Claims that have not been Allowed as of the Effective Date and all Allowed Administrative Claims that will be paid after the Effective Date. *Id.* at § 15.3. In the event that the Debtors, the Liquidating Trustee, or the Master Trustee objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. *Id.*

All Administrative Claims that become Allowed after the Effective Date shall be paid solely from the Administrative Claims Reserve, and shall not constitute a claim against the Liquidating Trust, the Liquidating Trustee, or any of the Liquidating Trust Assets. *Id.* No Holder of an Administrative Claim shall have recourse for any deficiency in the payment of its Administrative Claim against any of the Released Parties, the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust. *Id.*

7. Treatment of Professional Claims

The Plan requires all Professionals seeking an award on account of a Professional Claim, other than Ordinary Course Professionals, to file final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by no later than sixty days after the Effective Date. *Id.* at § 2.2. Professionals shall receive Cash in an amount equal to 100% of the amount of their Allowed Professional Claim. *Id.*

8. Exculpation Clause

The Plan contains an exculpation clause applicable to any "Released Party," defined as "the Estates, the Debtors, the Committee, the members of the Committee, the Indenture Trustees and their affiliates, and each current and/or former member, manager, officer, director, employee, counsel, advisor, professional, or agents of each of the foregoing who were employed or otherwise serving in such capacity before or after the Petition Date." *Id.* at § 1.147. The exculpation clause provides:

> To the maximum extent permitted by applicable law, each Released Party shall not have or incur any liability for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases (including, without limitation, the filing of the Chapter 11 Cases), the marketing and the sale of Assets of the Debtors, the Plan and any related documents (including, without limitation, the negotiation and consummation of the Plan, the pursuit of the Effective Date, the administration of the Plan, or the property to be distributed under the Plan), or each Released Party's exercise or discharge of any powers and duties set forth in the Plan, except with respect to the actions found by Final Order to constitute willful misconduct, gross negligence, fraud, or criminal conduct, and, in all respects, each Released Party shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Without limitation of the foregoing, each such Released Party shall be released and exculpated from any and all Causes of Action that any Person is entitled to assert in its own right or on behalf of any other Person, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence in any way relating to the subject matter of this Section.

Id. at § 13.7.

"Causes of Action" means

> any and all present or future claims, rights, legal and equitable defenses, offsets, recoupments, actions in law or equity or otherwise, choses in action, obligation, guaranty, controversy, demand, action suits, damages, judgments,

third-party claims, counter-claims, cross-claims against any Person, whether known or unknown, liquidated or unliquidated, foreseen or unforeseen, existing or hereafter arising, whether based on legal or equitable relief, whether arising under the Bankruptcy Code or federal, state, common, or other law or equity, whether or not the subject of a pending litigation or proceedings on the Effective Date or thereafter, including without limitation: (a) all Avoidance Actions; (b) all other claims in avoidance, recovery, and/or subordination; (c) all SGM Claims; (d) all claims against Integrity Healthcare, LLC and BlueMountain Capital Management LLC; and (e) all other actions described in the Disclosure Statement, the Confirmation Order, the Schedules, or the Plan; provided, however, (x) any claims arising under the Interim Agreements and (y) any claims or other litigation compromised as part of a Creditor Settlement Agreement, are, in each case, excluded.

Id. at § 1.30.

D. Summary of Unresolved Confirmation Objections and the Debtors' Responses Thereto [Note 3]

SGM Objection

SGM asserts an Administrative Claim in the minimum amount of $45.2 million, consisting of the $30 million Deposit, accrued interest on the Deposit in the estimated amount of $6.2 million, professional fees incurred in connection with defending against the Adversary Proceeding in the estimated amount of $4 million, professional fees incurred in prosecuting the SGM Counterclaim in the estimated amount of $2 million, and other out-of-pocket costs and professional fees incurred in connection with the SGM APA in the estimated amount of $3 million.

SGM makes the following objections to confirmation of the Plan:

1) The Plan is not feasible because there is no indication that the Administrative Claims Reserve includes sufficient funding for SGM's administrative claim.
2) The Plan violates § 1129(a)(9) because it provides that SGM's administrative claim can be satisfied only from the Administrative Claims Reserve, and bars SGM from asserting a claim against the Liquidating Trust Assets in the event the Administrative Claims Reserve is not

sufficient to satisfy SGM's claim.

3) The Plan bars SGM from seeking disgorgement of Professional Claims in the event that the Administrative Claims Reserve is inadequate to satisfy SGM's administrative claim. The Plan thus impermissibly discriminates against SGM since it provides that Professional Claims will be paid in full but leaves open the possibility that SGM's administrative claim may not be paid in full.
4) The Plan improperly eliminates SGM's setoff and recoupment rights against the Debtors, which could prejudice SGM's ability to defend itself in the Adversary Proceeding and prosecute the SGM Counterclaim.

Debtors respond to SGM's confirmation objection as follows:

1) Because SGM's alleged Administrative Claim is not yet allowed, the Debtors are not required to set aside cash in the Administrative Claims Reserve sufficient to satisfy the full amount of the claim as alleged by SGM. Instead, the Court can assess the Plan's feasibility by estimating the amount of SGM's Administrative Claim. The Debtors have agreed to set aside the entirety of the $30 million Deposit. The reserve of the Deposit is more than sufficient—for example, even if SGM had a 50% chance of success, the value of the SGM Counterclaim is only $17.28 million, just over half the amount reserved by the Debtors.
2) SGM lacks standing to object to Plan provisions concerning setoff and recoupment. SGM does not have a right of setoff because it has no prepetition claims, and § 553(a) only preserves prepetition claims. SGM's contention that the Plan's provisions cutting off recoupment rights are intended to prejudice its ability to assert the SGM Counterclaim or defend itself in the Adversary Proceeding is mistaken. The Plan provision cutting off recoupment rights applies only to a "Claim," defined in the Plan to refer to a prepetition claim only. The provision does not apply to SGM's alleged Administrative Claim.
3) The Plan's bar upon the disgorgement of Professional Claims is permissible. Courts have held that the Bankruptcy Code does not authorize the disgorgement of professional fees upon insolvency. *See In re Santa Fe Med. Grp., LLC*, 557 B.R. 223, 227 (Bankr. D.N.M. 2016) and *In re Home Loan Serv. Corp.*, 533 B.R. 302, 304–05 (Bankr. N.D. Cal. 2015).

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Toyon Objection

Similar to SGM, Toyon Associates, Inc. ("Toyon") asserts that the Administrative Claims Reserve is not sufficient to satisfy Toyon's administrative claim, which Toyon asserts exceeds $12.5 million. The Debtors state that they have reserved $250,000 on account of Toyon's administrative claim, and that this amount is more than adequate given that Toyon's claim is unliquidated and is unlikely to succeed.

Premier Objection

Premier, Inc., directly and through its affiliates ("Premier") is a party to seven prepetition agreements with the Debtors (the "Premier Agreements"). Each of the Premier Agreements was assumed as part of a settlement agreement with the Debtors resolving certain financial and operating disputes between the parties [Doc. No. 2352] (the "Premier Settlement"). Premier objects to the Plan on the grounds that (1) the Plan is unclear about the source of the payment of the Debtors' obligations under the Premier Settlement; that (2) the Plan fails to specify the duration of the Post-Effective Date Debtors; and that (3) the Plan's release provisions are unduly broad.

Debtors state that the Plan is clear that that pre-Effective Date obligations, including those associated with the Premier Settlement, will be satisfied in the ordinary course of business; that the Plan specifies that the Post-Effective Date Debtors shall continue to exist until the expiration of the Interim Agreements; and that the Plan's release provisions are permissible.

Long Beach Memorial Medical Center ("LBMMC") Objection

LBMMC is a 453-bed hospital located in Long Beach, CA. Prior to the Petition Date, LBMMC and SFMC entered into two agreements (the "LBMMC Agreements") under which LBMMC continues to delivery ordinary course medical services to SFMC post-petition, including cardiovascular, trauma, and pediatric care services. The Plan provides for the rejection of the LBMMC Agreements.

LBMMC requests that the Debtors provide information as to whether the Liquidating Trustee will request that services be provided by LBMMC subsequent to the rejection of the LBMMC Agreements. LBMMC also objects to the general injunction in § 13.6(a), which LBMMC contends is overly broad and violates § 524(e).

Debtors state that if Prime, the purchaser of SFMC, wants transitional or post-closing services from LBMMC, then Prime will need to contract directly with

LBMMC for those services. Alternatively, if the Debtors so agree, the Debtors will pay for such services as a pass-through and be reimbursed for such services by Prime pursuant to the Transition Services Agreement. Debtors dispute LBMMC's contention that the Plan's general injunction is overly broad.

HealthNet Objection

HealthNet asserts that the Plan is not feasible because the Debtors do not intend to assume and assign to Prime a Medi-Cal services agreement between SFMC and HealthNet (the "HealthNet Agreement"). HealthNet contends that assignment of the HealthNet Agreement is one of the conditions imposed by the Attorney General on the Prime Sale; that the Prime Sale cannot close because Prime intends to reject the HealthNet Agreement in violation of the Attorney General's conditions; and that accordingly the Plan is not feasible since the proceeds of the SFMC Sale are necessary to fund the Plan.

Debtors' dispute HealthNet's contention that assumption and assignment of the HealthNet Agreement to Prime is among the conditions imposed by the Attorney General. Debtors state that the condition requires only that Prime enter into an agreement with HealthNet, not that Prime accept assignment of the existing HealthNet Agreement.

AppleCare Objection

AppleCare Medical Group, Inc., AppleCare Medical Group, St. Francis Inc., and AppleCare Medical Management, LLC (collectively, "AppleCare") asserts an administrative expense claim in the amount of $16,482,485.54 against SFMC. AppleCare argues that the Debtors have not established that the Administrative Claims Reserve contains sufficient funds to satisfy AppleCare's administrative claims.

The Debtors and AppleCare are engaged in negotiations in an attempt to consensually resolve the AppleCare Objection. *See* Doc. No. 5446. To facilitate continued negotiations, the Court will not issue a tentative ruling regarding the AppleCare Objection.

II. Findings of Fact and Conclusions of Law

A. The SGM Objection is Overruled [Note 4]

1. The Administrative Claims Reserve is Sufficient to Satisfy SGM's Administrative Claim

SGM argues that the Plan is not feasible because the Administrative Claims

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Reserve does not contain cash sufficient to pay the full amount of the administrative claim asserted by SGM (the "SGM Admin Claim"). SGM is mistaken.

In assessing the feasibility of the Plan, the Court must evaluate "the possibility that a potential creditor may, following confirmation, recover a large judgment against the debtor." *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 517 (9th Cir. 2007). The Court is required to "exercise its sound discretion in considering how such litigation may affect the feasibility of any specific plan." *Id.*

Where, as here, the amount of an administrative claim has not yet been determined, the Court may estimate the amount of the claim for the purpose of determining plan feasibility. As explained by the court in *In re Adelphia Bus. Sols., Inc.*:

> [W]hen estimating claims, Bankruptcy Courts may use whatever method is best suited to the contingencies of the case, so long as the procedure is consistent with the fundamental policy of Chapter 11 that a reorganization "must be accomplished quickly and efficiently." *Bittner v. Borne Chemical Co.,* 691 F.2d at 135–37; *see also, e.g., In re Brints Cotton Mktg., Inc.,* 737 F.2d 1338, 1341 (5th Cir.1984), citing 3 *Collier on Bankruptcy* ¶ 502.03, at 502–77 (15th ed.1983). Bankruptcy Courts have employed a wide variety of methods to estimate claims, including summary trial, *In re Baldwin–United Corp.,* 55 B.R. 885, 899 (Bankr.S.D.Ohio 1985), a full-blown evidentiary hearing, *In re Nova Real Estate Inv. Trust,* 23 B.R. 62, 65 (Bankr.E.D.Va.1982), and a review of pleadings and briefs followed by oral argument of counsel, *In re Lane,* 68 B.R. 609, 613 (Bankr.D.Haw.1986). In so doing, courts specifically have recognized that it is often "inappropriate to hold time-consuming proceedings which would defeat the very purpose of 11 U.S.C. § 502(c)(1) to avoid undue delay."

341 B.R. 415, 422–23 (Bankr. S.D.N.Y. 2003).

Estimation of the SGM Admin Claim is required here because awaiting the fixing or liquidation of the claim "'would unduly delay the administration of the case.'" *Id.* at 422 (citing § 502(c)). A jury trial in the Adversary Proceeding is set to commence on November 2, 2021. *See* 2:20-cv-00613-DSF, Doc. No. 51. It is probable that any judgment entered in the Adversary Proceeding will be appealed. In all likelihood, it will take at least two years, and possibly much longer, for the SGM Admin Claim to be liquidated.

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There is no merit to SGM's contention that this Court's estimation of the SGM Admin Claim for plan feasibility purposes will usurp the District Court's exclusive jurisdiction over the Adversary Proceeding. The Court estimates the SGM Admin Claim only for the purpose of determining whether the Plan can be confirmed. Estimation of the claim has no effect whatsoever on the Adversary Proceeding. *See In re Bicoastal Corp*., 122 B.R. 771, 775 (Bankr. M.D. Fla. 1990)("There is no question that the estimation of claims in bankruptcy does not establish a binding legal determination of the ultimate validity of a claim nor a binding determination of any issues."). Bankruptcy courts routinely estimate claims arising in connection with litigation for plan confirmation purposes, with the understanding that the ultimate amount of the claim will be determined through the underlying litigation. *See, e.g.*, *Adelphia*, 341 B.R. at 422; *In re Spansion, Inc.*, 426 B.R. 114, 146 (Bankr. D. Del. 2010) (estimating administrative claim alleged to be $100 million at $4.2 million for plan confirmation purposes); *In re Chemtura Corp.*, 448 B.R. 635, 649 (Bankr. S.D.N.Y. 2011).

A time-consuming evidentiary hearing to estimate SGM's claim is not appropriate, as such a proceeding would defeat the very purpose of estimation—expeditious confirmation of the Plan. *See Adelphia*, 341 B.R. at 422. Current projections indicate that unsecured creditors will receive $8.1 million, or only approximately 0.5% of their claims. *See* Doc. No. 4994, Ex. A. The delay arising from a protracted evidentiary hearing to estimate the SGM Admin Claim could push the estates into administrative insolvency.

The Court will estimate SGM's claim based upon its review of the pleadings and briefing filed in the Adversary Proceeding. *See Adelphia*, 341 B.R. at 422–23 (finding review of the pleadings in pending litigation to be an appropriate means of claims estimation). Having conducted such a review, the Court estimates the SGM Admin Claim to have a value of $0. *See Harbin*, 486 F.3d at 520 n.7 (stating that the Court is not prohibited "from valuing [the] claim at zero" as long as it "exercise[s] its own judgment in reaching such a conclusion").

The SGM Counterclaim alleges that Debtors breached the SGM APA by, among other things, (1) failing to fulfill their obligation under § 8.6 to obtain an order authorizing the sale of the hospitals free and clear of certain conditions which the California Attorney General alleged he had the authority to impose; (2) failing to fulfill their obligation under § 8.7 to obtain a settlement agreement with the California Department of Healthcare Services (the "DHCS"); and (3) failing to operate the hospitals in accordance with applicable law. Based upon these alleged breaches, SGM

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contends that it is entitled to return of the Deposit plus additional damages and interest in the approximate amount of $15.2 million.

The Court finds that SGM has only a negligible chance of prevailing upon its claims. First, SGM alleges that the Debtors breached § 8.6 by failing to obtain an order authorizing the sale free and clear of the Attorney General conditions. But on November 14, 2019, the Court entered an order providing in relevant part:

> Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the "APA")) are an "interest in property" for purposes of 11 U.S.C. § 363(f). The Assets (as defined in the APA) are being sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).

Doc. No. 3611 (the "Supplemental Sale Order").

The Supplemental Sale Order contained language almost identical to the language contemplated in § 8.6 of the SGM APA. Specifically, § 8.6 states that the Debtors will have satisfied the obligations imposed thereunder if they obtain "an order … finding that the Additional Conditions are an 'interest in property' for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser." SGM APA at § 8.6 [Doc. No. 2305-1].

SGM further alleges that the Debtors were in breach of § 8.6 because the Supplemental Sale Order was subject to an appeal at the time the Debtors demanded that SGM close the sale. Section 8.6 excused SGM from closing the sale if the Supplemental Sale Order was subject to an appeal. Its purpose was to protect SGM by insuring that once the sale had closed, there would be no possibility that the Additional Conditions could be reimposed upon the hospitals through reversal of the Supplemental Sale Order on appeal. Such a situation could occur only if the Attorney General appealed the Supplemental Sale Order, which was impossible, since the Attorney General expressly waived his right to appeal. It was never contemplated that SGM would appeal the Supplemental Sale Order, which the Debtors obtained for its benefit. In the Court's view, SGM's appeal of the Supplemental Sale Order was a cynical ploy to manufacture a frivolous excuse for failing to close the sale. For these reasons, the Court finds that SGM has little chance of prevailing upon its allegation that the Debtors failed to satisfy § 8.6 of the SGM APA.

Second, SGM alleges that the Debtors breached § 8.7 by failing to obtain a settlement with the DHCS. However, the Debtors obtained approval of the requisite settlement on December 9, 2019. *See* Doc. No. 3787. SGM attempts to distract attention from the Debtors' fulfillment of their obligations under § 8.7 by alleging that the Debtors improperly demanded that SGM close the sale before the documentation memorializing the DHCS settlement had been completed. This allegation is a red herring, given that SGM had ample time to close the SGM Sale after the DHCS settlement had been memorialized on December 9, 2019. SGM is not likely to prevail upon its allegation that the Debtors breached § 8.7 of the SGM APA.

Third, SGM alleges that the Debtors breached the SGM APA by failing to operate the hospitals in accordance with California law. SGM is unlikely to prevail upon this claim because the alleged operational issues would constitute a breach of the SGM APA only if they would have had a "material adverse effect" upon the transaction. The SGM APA is governed by California law, and California courts look with disfavor upon the enforcement of a "material adverse effect" clause. For example, in *1601 McCarthy Blvd., LLC v. GMAC Comm'l Mortg. Corp.*, 2005 WL 4859147 (Cal. Super. Ct. June 1, 2005), the court held that a loan servicer's invocation of a material adverse effect clause to avoid its obligation to disburse funds to a borrower was an "unfair business practice or act," because the servicer "used the material adverse change clause as a lever against [the borrower] to retain control over the borrower's … funds." *McCarthy Blvd.*, 2005 WL 4859147 at *¶ 59. The court found:

> [L]enders rarely employ—and even less frequently invoke and enforce—this type of broad-based material adverse change clause in commercial real estate transactions…. And even when they are invoked, … lenders only use the clause as a tool to "bring the borrower to the table, use it as lever against the borrower, or ... a club against the borrower to modify the loan or change the loan." There is no evidence in the record that the material adverse change clause in the Deed of Trust benefits any side but the lender, or serves any other purpose than to threaten the borrower with dire consequences….
>
> The record supports Mr. Greenwald's opinion that broad-based material adverse change clauses are rarely used, and in those rare instances when they are, they are placed in deeds of trust purely for their in terrorem effect and not with any genuine intention to invoke them.

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Id. at ¶¶ 59 and 68.

Although the SGM APA is governed by California law, Delaware cases interpreting material adverse effect clauses are helpful persuasive authority. A significant amount of the litigation over the enforcement of asset purchase agreements occurs before Delaware courts, and the Delaware caselaw interpreting material adverse effect clauses is well developed.

In *In re IBP, Inc. Shareholders Litigation*, the court rejected purchaser Tyson Foods' claim that it was not required to consummate a merger because of a material adverse effect. The court held:

> [A] buyer ought to have to make a strong showing to invoke a Material Adverse Effect exception to its obligation to close. Merger contracts are heavily negotiated and cover a large number of specific risks explicitly. As a result, even where a Material Adverse Effect condition is as broadly written as the one in the Merger Agreement, that provision is best read as a backstop protecting the acquiror from the occurrence of unknown events that substantially threaten the overall earnings potential of the target in a durationally-significant manner. A short-term hiccup in earnings should not suffice; rather the Material Adverse Effect should be material when viewed from the longer-term perspective of a reasonable acquiror.

In re IBP, Inc. Shareholders Litig. (IBP, Inc. v. Tyson Foods, Inc.), 789 A.2d 14, 68 (Del. Ch. 2001).

In *Hexion Specialty Chemicals, Inc. v. Huntsman Corp.*, 965 A.2d 715, 738 (Del. Ch. 2008), the court reiterated that a "buyer faces a heavy burden when it attempts to invoke a material adverse effect clause in order to avoid its obligation to close."

In view of the difficult of showing a "material adverse effect," SGM is not likely to prevail upon its claim that the Debtors breached the SGM APA by failing to operate the hospitals in accordance with applicable law.

The Debtors have agreed to set aside the $30 million Deposit pending further order of the District Court. Given the Court's estimation of SGM's Admin Claim at $0, the reserve of the Deposit is more than sufficient. SGM's objection regarding the adequacy of the Administrative Claims Reserve is overruled.

2. SGM's Objection to Plan § 10.5(b) is Without Merit

SGM asserts that § 10.5(b) of the Plan purports to limit the amount of SGM's

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Admin Claim to the amount estimated by the Court. SGM misreads § 10.5(b).

Section 10.5(b) does not apply to administrative claims. That section addresses the "Estimation of Disputed Claims," and "Disputed" describes "Claims" that are either scheduled or with respect to which a proof of claim has been filed. Plan at § 1.58. The Plan does not incorporate the definition of "Claim" into its definition of "Administrative Claim"; instead, the Plan defines an "Administrative Claim" as a "[r] equest for Payment of an administrative expense of a kind specified in § 503(b) and entitled to priority pursuant to § 507(a)(2) …." *Id.* at § 1.13.

To be clear, the Court's estimation of the SGM Admin Claim is made only for the purposes of determining plan feasibility under § 1129(a)(9). The estimate does not prevent the SGM Admin Claim from being allowed at a higher amount in the future.

3. The Plan's Exculpation Clause is Appropriate

SGM asserts that the Exculpation Clause violates § 524(e) by providing a discharge to non-debtor parties. The Court disagrees.

In *Blixseth v. Credit Suisse*, the Ninth Circuit approved an exculpation clause providing that parties involved in the negotiation and implementation of the plan would not be liable for acts undertaken during the case. 961 F.3d 1074, 1078–79 (9th Cir. 2020). The court held that the bankruptcy court "had the authority to approve an exculpation clause intended to trim subsequent litigation over acts taken during the bankruptcy proceedings and so render the Plan viable." *Blixseth*, 961 F.3d at 1084.

Here, the language of the Exculpation Clause is very similar to that of the clause approved in *Blixseth*. The Exculpation Clause applies only to those parties who have been heavily involved in these cases and in the negotiation of the Plan, and applies only with respect to acts taken during the cases. The Exculpation Clause was a necessary component of the compromise that resulted in the Plan. The Exculpation Clause is appropriate and does not run afoul of § 524(e).

4. The Plan's Treatment of Professional Claims is Appropriate

SGM argues that the Plan impermissibly prioritizes Professional Claims by limiting any recovery on the SGM Admin Claim to the Administrative Claims Reserve, and barring SGM from seeking the disgorgement of Professional Claims if the Administrative Claims Reserve proves inadequate. SGM is incorrect.

The cases cited by SGM are not on point, because they discuss disgorgement in the context of a Chapter 11 case that has been converted to Chapter 7. Even if the cases did apply, there is a split of authority as to whether disgorgement of professional fees may be ordered upon administrative insolvency. In the Court's view, the better-reasoned approach is that disgorgement is not permitted. As explained in *In re Home Loan Serv. Corp.*:

> There is nothing …. requiring, or even suggesting, disgorgement of earned and paid chapter 11 expenses solely in order to pay chapter 7 administrative expenses in full. One recent bankruptcy case held that disgorgement based solely on administrative insolvency is not permitted under § 726(b). *See In re Headlee Management Corp.,* 519 B.R. 452 (Bankr.S.D.N.Y.2014). In reaching this conclusion, the *Headlee* court noted that § 726 simply does not provide a remedy for the situation in which professional fees have been paid in a chapter 11 case prior to conversion. The *Headlee* court specifically declined to read a disgorgement remedy into the statute, particularly since sections 549 and 330 did not offer a disgorgement remedy in this situation. *Id.* at 458–59.

533 B.R. 302, 304–05 (Bankr. N.D. Cal. 2015).

The facts of *In re Montgomery Ward Holding Corp.*, 306 B.R. 489 (Bankr. D. Del. 2004) are more analogous to the present situation than the cases discussing disgorgement in the context of a Chapter 11 case that has been converted to Chapter 7. In *Montgomery Ward*, the plan confirmed by the court provided that all administrative claims which became allowed after the plan's effective date would be paid only from assets revested in New Retailer, an entity created by the plan. *Id.* at 492–93. The assets held by New Retailer proved inadequate to satisfy the administrative claim of CenterPoint, a creditor whose administrative claim became allowed several years after the plan was confirmed. *Id.* The court held that CenterPoint's administrative claim could not be satisfied through either the disgorgement of previously-awarded professional fees or from a reserve that had been set aside to pay unsecured creditors. *Id.* at 492–95. The court reasoned that upon confirmation the plan became a legally-binding agreement, and that CenterPoint remained bound by its terms, notwithstanding the fact that its administrative claim would remain unsatisfied. *Id.*

As discussed above, it is exceptionally unlikely that SGM will be able to establish that it is entitled to an administrative claim, and even less likely that SGM will be able to show entitlement to an administrative claim of $45.2 million. The small chance that SGM will prevail upon the SGM Counterclaim does not render impermissible the Plan's provisions limiting satisfaction of the SGM Admin Claim to the Administrative Claims Reserve and barring SGM from seeking disgorgement from other estate professionals in the event the Administrative Claims Reserve proves insufficient. To obtain confirmation, the Debtor is required only to show that the Plan "offers a reasonable prospect of success and is workable…. The prospect of financial uncertainty does not defeat plan confirmation on feasibility grounds since a guarantee of the future is not required…. The mere potential for failure of the plan is insufficient to disprove feasibility." *Mutual Life Ins. Co. of N.Y. v. Patrician St. Joseph Partners Ltd. P'ship (In re Patrician St. Joseph Partners Ltd. P'ship)*, 169 B.R. 669, 674 (D. Ariz. 1994). The Debtors have easily surpassed the threshold of showing that the Plan is feasible. The remote possibility that the Administrative Claims Reserve could prove inadequate cannot defeat confirmation. There always exists some possibility that the assets reserved to pay claims will prove insufficient, as was the case in *Montgomery Ward*.

5. SGM's Objection to the Plan's Setoff and Recoupment Provisions is Overruled

SGM asserts that § 13.6 of the Plan improperly eliminates the setoff and recoupment rights of creditors. SGM fears that § 13.6 will prejudice its ability to defend itself in the Adversary Proceeding and prosecute the SGM Counterclaim.

SGM's fear is unfounded and is based upon a misreading of the Plan. The provision to which SGM objects prohibits "Persons that have held, currently hold or may hold a Claim against the Debtors" from "asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Post-Effective Date Debtors or the Liquidating Trust *with respect to a Claim ….*" (emphasis added). As discussed in Section II.A.2, above, the term "Claim" does not encompass the SGM Admin Claim. The Plan's setoff and recoupment provisions will therefore have no effect upon SGM's ability to defend itself in the Adversary Proceeding or prosecute the SGM Counterclaim. SGM's objection to these provisions is overruled.

B. The Toyon Objection is Overruled

Toyon contends that the Plan is not feasible because the Administrative Claims Reserve is not sufficient to satisfy its administrative claim, which Toyon asserts is in excess of $12.5 million (the "Toyon Admin Claim").

Toyon has been retained as an ordinary course professional (an "OCP") to pursue on behalf of the Debtors appeals intended to increase the Medicare reimbursements owed to the Debtors. In the declaration it filed in support of its application for retention as an OCP (the "Retention Application"), Toyon stated:

> For the Appeal Services described above, the Firm is paid a contingency of the total additional reimbursement paid to the hospital resulting from the successful pursuit of appeal issues. With respect to appeals, no fees or expenses are paid to Toyon unless the appeal or reopening results in additional reimbursement to the hospital.

Doc. No. 900 at ¶ 6.

In connection with stipulations necessary to facilitate the sale of certain of the Debtors' hospitals, the Debtors withdrew many of the appeals that Toyon had been pursuing. Notwithstanding the fact that these withdrawn appeals did not yield an infusion of cash into the estates, Toyon asserts that the appeals nonetheless provided value because they enhanced the Debtors' bargaining leverage, thereby increasing the proceeds that the estates received from the disposition of these assets.

The Debtors have set aside $250,000 in the Administrative Claims Reserve for the Toyon Admin Claim. As discussed in Section II.A.1, above, the Court may estimate the value of the Toyon Admin Claim for plan feasibility purposes. The Court estimates the Toyon Admin Claim at no more than $250,000. The amount reserved by the Debtors for Toyon's claim is sufficient.

In arriving at this estimate, the Court relies upon the Declaration of Peter C. Chadwick, the Debtors' Chief Financial Officer and a managing director at Berkeley Research Group. Toyon objects to Chadwick's testimony on the ground that it offers an opinion on an ultimate issue of law (the amount which Toyon will recover on account of its administrative claim) and on the ground that it lacks foundation. Toyon's objections are overruled. As the Debtors' CFO, Chadwick is qualified to testify as to his estimate of the amount of the Toyon Admin Claim that will ultimately be allowed. Such testimony does not constitute an opinion as to an ultimate issue of law. Instead, the testimony is an estimate regarding the monetary amount of the estate's litigation exposure, which falls within the scope of Chadwick's expertise as CFO.

The Court has also assessed the arguments asserted by Toyon in concluding that the Toyon Admin Claim has an estimated value of $250,000. A substantial portion of the administrative claim to which Toyon asserts it is entitled is based upon work performed in connection with appeals which were withdrawn (the "Withdrawn Appeals"). Toyon contends it is entitled to $3,829,235.85 for Withdrawn Appeals pertaining to OCH and SLRH, $5,912,340.60 for Withdrawn Appeals pertaining to

Seton, and $2,273,553.45 for Withdrawn Appeals pertaining to SFMC.

As set forth above, Toyon recognized in the Retention Application that it would not be paid unless its appeals resulted in additional reimbursement to the hospitals. Therefore, it is not likely that Toyon will be able to show that it is entitled to an administrative claim for work performed in connection with the Withdrawn Appeals. Recognizing this impediment, Toyon alleges that the Withdrawn Appeals nonetheless provided value by enhancing the Debtors' bargaining leverage in connection with the sales. This argument is not likely to be successful because purchasers, recognizing that Medicare appeals are time-consuming and frequently unsuccessful, attribute little to no value to pending appeals when bidding for hospitals.

The Court finds that the $250,000 reserved for the Toyon Admin Claim is sufficient for plan feasibility purposes. The Toyon Objection is overruled.

C. The HealthNet Objection is Overruled

HealthNet asserts that the Plan is not feasible because the Debtors do not intend to assume and assign to Prime a Medi-Cal services agreement between SFMC and HealthNet (the "HealthNet Agreement"). HealthNet contends that assignment of the HealthNet Agreement is one of the conditions imposed by the Attorney General on the Prime Sale; that the Prime Sale cannot close because Prime intends to reject the HealthNet Agreement in violation of the Attorney General's conditions; and that accordingly the Plan is not feasible since the proceeds of the SFMC Sale are necessary to fund the Plan.

HealthNet's assertion that assignment of the HealthNet Agreement is among the conditions imposed by the Attorney General is not correct. The relevant condition provides:

> For ten years from the closing date of the Asset Purchase Agreement, Prime Healthcare Services, Inc. shall … [m]aintain and have Medi-Cal Managed Care contracts with the below-listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medi-Cal beneficiaries … as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan: …

> (ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

Conditions to the Sale of St. Francis Medical Center [Doc. No. 5199, Ex. B] at § IX.

This condition requires only that Prime enter into an agreement with HealthNet on the same terms and conditions as other similarly situated hospitals; it does not require that Prime retain the existing HealthNet Agreement. Prime is in discussions with HealthNet regarding a new agreement. Adcock Decl. at ¶ 7. Contrary to HealthNet's contention, Prime's rejection of the *existing* HealthNet Agreement does not run afoul of the Attorney General's conditions, because Prime intends to have in place a *new* agreement with HealthNet prior to the closing of the sale.

D. The Premier Objection is Overruled

Premier questions whether the Plan adequately provides for the payments Premier is owed under the Premier Settlement. The Debtors have included an additional $200,000 in the Administrative Claims Reserve for "Ordinary Course Creditors" on account of Premier. The Court finds that this amount is sufficient to satisfy the Debtors' obligations under the Premier Settlement.

Next, Premier asserts that the Plan does not specify the duration of the Post-Effective Date Debtors. Premier is incorrect. The Disclosure Statement sets forth the duration of the Post-Effective Date Debtors as follows:

> The Sale-Leaseback Debtors, SVMC, St. Vincent Dialysis, the SCC Debtors, and VHS (together, the "Post-Effective Date Debtors") shall continue to exist after the Effective Date of the Plan (i) with the Sale-Leaseback Debtors existing until the expiration of the Interim Agreements so that they may engage in the transition tasks set forth in Section 5.8 of the Plan, and (ii) with the SCC Debtors existing until all Quality Assurance Payments are collected. The primary transaction task (i) for the Sale-Leaseback Debtors involves the Interim Agreements, and (ii) for the SCC Debtors involves remitting Quality Assurance Payments received after the Effective Date to the Liquidating Trust.

Disclosure Statement at 80.

Finally, Premier objects to the Plan's general releases. For the reasons discussed in Section II.A.3, above, the Plan's releases are appropriate, and Premier's objection to the releases is overruled.

E. The LBMMC Objection is Overruled

LBMMC's objection consists primarily of requests for clarification regarding certain Plan provisions. The Debtors have sufficiently responded to these requests for clarification in their reply to the LBMMC Objection.

LBMMC also objects to the Plan's general releases. For the reasons discussed in Section II.A.3, above, the Plan's releases are appropriate, and Premier's objection to the releases is overruled.

F. The Remaining Objections Are Moot or Have Been Resolved

The Court finds that objections asserted by UnitedHealthcare Ins. Co., SCAN Health Plan, Blue Shield, and Humana have been resolved by the Debtors' agreement to include additional language in the Confirmation Order. *See* Doc. No. 5455.

The objection asserted by Aetna Life Insurance Company has been resolved by a stipulation [Doc. No. 5338] that has been approved by the Court [Doc. No. 5350]. The objection asserted by the Cigna Entities [Doc. No. 5231] has been resolved by the filing of the *Notice Re Irrevocable Designation Concerning Assumption and Assignment of Cigna Contracts* [Doc. No. 5370]. *See* Doc. No. 5396 (Cigna's notice stating that its objection has been resolved).

The Reservation of Rights asserted by Seoul Medical Group, Inc. ("Seoul") [Doc. No. 5268] is moot given the concurrently-issued ruling to approve the settlement agreement to which Seoul is a party.

The objection of GRM Information Management Services, Inc. ("GRM") to the adequacy of the Administrative Claims Reserve has been resolved by the Debtors' agreement to set aside $2 million in the reserve on account of GRM's administrative claim. *See* Doc. No. 5425.

The Attorney General objects to the Debtors' failure to stipulate to include the following provision in the Confirmation Order:

> The California Attorney General and the Debtors reserve all rights, arguments and defenses 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 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

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[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.

Doc. No. 5294.

In a concurrently issued ruling, the Court has found that the Debtors are authorized to sell St. Francis free and clear of the regulatory obligations that the Attorney General asserts he has the authority to impose under Cal. Corp. Code §§ 5914 *et seq.* This ruling moots the Attorney General's request for a provision in the Confirmation Order that would reserve rights that the Court has found the Attorney General does not possess.

G. The Deemed Substantive Consolidation Contemplated by the Plan is Approved

The Plan provides for the deemed substantive consolidation of the Debtors' estates. Upon entry of a substantive consolidation order, the "consolidated assets create a single fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-company claims are extinguished; and, the creditors of the consolidated entities are combined for purposes of voting on reorganization plans." *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 764 (9th Cir. 2000).

"Deemed consolidation" is a court-developed alternative to substantive consolidation. Unlike substantive consolidation, deemed consolidation does "not result in the merger of or the transfer or commingling of any assets of the Debtors … [which] will continue to be owned by the respective Debtors." *In re Owens Corning*, 419 F.3d 195, 202 (3d Cir. 2005). In other words, substantive consolidation actually combines the debtors' assets and liabilities into a single entity, whereas deemed consolidation merely treats the assets and liabilities as if they were pooled for the purpose of creditor distributions without actually merging the debtor entities.

Deemed substantive consolidation is appropriate where (1) creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit or where (2) the affairs of the debtors are so entangled that consolidation would benefit all creditors. *Bonham*, 229 F.3d at 764. "The presence of either factor is a sufficient basis to order substantive consolidation." *Id.* at 766.

Here, both factors are satisfied. With respect to the first factor, the Debtors' secured lenders dealt with the Debtors as a single economic unit. A substantial amount of the Debtors' prepetition secured debt relates to loan and bond obligations

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on which multiple debtors are obligated. Specifically, VHS, SFMC, SVMC, SMC, and SLRH (collectively, the "Obligated Group Members") are all obligated on the 2005 Series A, G and H Revenue Bonds, the 2015 Revenue Notes, and the 2017 Revenue Notes (collectively, the "Obligated Bonds").

The Obligated Bonds imposed joint and several liability on the Obligated Group Members, and the terms of the Obligated Bonds only addressed the rights and obligations of the Obligated Group Members collectively, rather than on a hospital-by-hospital basis. Further, the Master Trust covenants for the Obligated Bond borrowings are Obligated Group-oriented and are not hospital-specific.

With respect to the second factor, the Debtors' affairs are so entangled that consolidation will benefit all creditors. The Debtors engaged in complex, prepetition intercompany transfers, which were not always booked as such, and would prove difficult and costly to unwind or reconcile. For example, VMF was historically supported by near-weekly funding from other Debtors, but these transfers were booked as direct net asset contributions rather than intercompany loans. Members of the Obligated Group transferred real estate collateral to Holdings, a non-Obligated Group member, to be used as collateral for the MOB Financing, but this transaction was not booked as an intercompany transfer.

H. The Plan Settlement is Approved

The Plan Proponents request that entry of the Confirmation Order constitute the Bankruptcy Court's approval, as of the Effective Date, of the Plan Settlement by and between the Debtors, the Prepetition Secured Creditors, and the Committee, pursuant to Bankruptcy Rule 9019 (the "Settlement Agreement").

The Court approves the Settlement Agreement pursuant to Bankruptcy Rule 9019. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Probability of Success on the Merits and Complexity of the Litigation

These factors weigh in favor of approving the Settlement Agreement. The settlement resolves both active claims (the litigation brought by the Committee on the Debtors' behalf challenging the validity of the liens asserted by the Prepetition Secured Creditors) and potential claims (the claims settled through the settlement's waiver and mutual release provisions). Given the complex nature of the parties' claims, rights, and theories, quantifying the overall probability of success is difficult. That reality supports approval of the Settlement Agreement, which enables confirmation of a Plan that will distribute funds to creditors.

Absent approval of the Settlement Agreement, the Plan would no longer work as filed. The Debtors would be required to file and solicit votes upon a completely new Plan, which would cost the estates significant time and money.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The Settlement Agreement is supported by both the Prepetition Secured Creditors and the Committee, which together comprise the overwhelming majority of the creditor body in these cases.

Difficulties to be Encountered in the Matter of Collection

This factor does not apply.

I. The Plan Satisfies the Requirements of § 1129

SECTION 1129(A)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th

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Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." "A claim that is substantially similar to other claims may be classified separately from those claims, even though section 1122(a) does not say so expressly." *In re Rexford Props., LLC*, 558 B.R. 352, 361 (Bankr. C.D. Cal. 2016).

The Plan's classification structure complies with § 1122(a). Claims and Interests are placed in thirteen different classes based upon differences in the legal or factual nature of those Claims and Interests, and each of the Claims and Interests in a particular Class is substantially similar to the other Claims and Interests in that Class.

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of ever unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate … classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest." There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan appropriately classifies administrative expense claims and priority tax claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan." The Plan specifies that Classes 1A and 1B are not impaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan." The Plan specifies the treatment of the impaired classes. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation." The Plan will be funded by the Debtors' remaining cash on hand and proceeds from the sale of SFMC and Seton. The Plan provides for the establishment of a Liquidating Trust to make distributions to creditors. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation …, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

Because no securities are being issued under the Plan, § 1123(a)(6) does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The members of the Post-Effective Date Committee are the California Nurses Association, Medline Industries, Inc., and the Pension Benefit Guaranty Corporation. *See* Doc. No. 5443. The Plan provides that the identity of the Liquidating Trustee and the identity of the directors serving on the Post-Effective Date Board of Directors will be disclosed in one or more Plan Supplements to be filed prior to the Effective Date.

Because the Plan Supplement(s) must be acceptable to the Committee and the Prepetition Secured Creditors, the Plan's provisions pertaining to the selection of officers and directors are consistent with the interests of creditors.

Because the Debtor is a non-profit and no equity security interests will be issued under the Plan, the Debtor is not required to satisfy § 1123(a)(7) with respect to equity security holders. *See St. Mary's Hosp., Passaic, N.J.*, 2010 WL 5126151, at *4 (Bankr. D.N.J. Feb. 2, 2010).

10. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan. The Plan contains certain of § 1123(b)'s optional provisions. The Plan is consistent with § 1123(b).

SECTION 1129(A)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Plan Proponents have obtained approval of a Disclosure Statement in accordance with § 1125; have obtained approval of the employment of professional persons; and have solicited votes on the Plan in accordance with procedures approved by the Court. The Plan Proponents have satisfied the requirements of § 1129(a)(2).

SECTION 1129(A)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

> The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

Good faith may be found where the Plan is supported by the major constituencies in the case. *In re Chemtura Corp.*, 439 B.R. 561, 608–09 (Bankr. S.D.N.Y. 2010) (finding good faith where the Debtor "negotiated honestly and at an arm's length … in an effort to create a confirmable plan that would satisfy all parties"). Here, the Plan was proposed jointly by the Debtors, the Committee, and the Prepetition Secured Creditors, after extensive negotiations at arm's length. Section 1129(a)(3) is satisfied.

SECTION 1129(A)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." The Plan provides that all professional fees are subject to review by the Court. The plan satisfies § 1129(a)(4).

SECTION 1129(A)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan Proponents have disclosed that the members of the Post-Effective Date Committee will be the California Nurses Association, Medline Industries, Inc., and the Pension Benefit Guaranty Corporation. *See* Doc. No. 5443. The identities of the Post-Effective Date Board of Directors and Liquidating Trustee will be disclosed in a Plan Supplement to be filed prior to the Effective Date. To satisfy § 1129(a)(5), the Debtors are required to disclose the identities of only those officers and directors that have already been selected. *See In re Charter Commc'ns*, 419 B.R. 221, 260 (Bankr. S.D.N.Y. 2009) ("To the extent the Plan's satisfaction of 11 U.S.C. § 1129(a)(5) remains at issue, the Court concludes that this confirmation standard is satisfied. It is undisputed that two out of the eleven seats on the Debtors' board of directors remain vacant. Although section 1129(a)(5) requires the plan to identify all directors of the reorganized entity, that provision is satisfied by the Debtors' disclosure at this time of the identities of the *known* directors.").

The Plan satisfies § 1129(a)(5).

SECTION 1129(A)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(A)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

All impaired classes that are entitled to vote have accepted the Plan. Section 1129(a)(7) is satisfied.

SECTION 1129(A)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. All impaired classes entitled to vote have accepted the Plan.

The only two classes deemed to reject the Plan—Class 11 (Subordinated General Unsecured Claims) and Class 12 (Interests)—are "vacant" classes that are not considered for purposes of § 1129(a)(8), pursuant to § 3.5 of the Plan:

> [a]ny Class of Claims, as of the commencement of the Confirmation Hearing, that does not have at least one (1) Holder of a Claim in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies § 1129(a)(8) with respect to that Class.

Plan § 3.5.

Section 1129(a)(8) is satisfied.

SECTION 1129(A)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of all allowed administrative claims on the Effective Date. For the reasons discussed in Sections II.A–B, above, the objections of SGM and Toyon—whose administrative claims have not yet been allowed—to the adequacy of the Administrative Claims Reserve are overruled. The Plan satisfies § 1129(a)(9).

SECTION 1129(A)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider." All impaired classes entitled to vote have accepted the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(A)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtors will have sufficient cash on hand to pay the amounts that are due on the Effective Date. As discussed in Sections II.A–B, above, the Debtors are not required to fund the Administrative Claims Reserve such that it provides for the full face amount of all alleged administrative claims that have not yet been allowed. The Court has estimated the amounts of administrative claims not yet allowed and finds the Administrative Claims Reserve to be adequate. The plan is feasible and satisfied § 1129(a)(11).

SECTION 1129(A)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date. The Plan provides for the payment in cash of all UST fees at the time of confirmation. Section 1129(a)(12) is satisfied.

SECTION 1129(A)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(A)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(A)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(A)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan does not provide for the transfer of any property in contravention of applicable nonbankruptcy law. The Plan satisfies § 1129(a)(16).

SECTION 1129(D)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan’s purpose is the avoidance of taxes. No securities are issued under the Plan. The Plan satisfies § 1129(d).

III. Conclusion

For the reasons set forth above, all unresolved objections to the Plan are **OVERRULED** and the Plan is **CONFIRMED**. The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1
The Debtors are as follows:
1) Verity Health System of California, Inc. ("VHS");
2) O'Connor Hospital ("OCH");
3) Saint Louise Regional Hospital ("SLRH");
4) St. Francis Medical Center ("SFMC");
5) St. Vincent Medical Center ("SVMC")
6) Seton Medical Center ("Seton");
7) Verity Business Services ("VBS");
8) O'Connor Hospital Foundation (the "OCH Foundation");
9) Saint Louise Regional Hospital Foundation (the "SLRH Foundation);
10) St. Francis Medical Center of Lynwood Foundation (the "SFMC Foundation");
11) St. Vincent Medical Center Foundation (the "SVMC Foundation");
12) Verity Medication Foundation ("VMF");
13) Verity Holdings, LLC ("Holdings");
14) De Paul Ventures, LLC ("DePaul");
15) De Paul Ventures—San Jose Dialysis, LLC; and St. Vincent Dialysis Center.

Note 2
The Prepetition Secured Creditors are UMB Bank, N.A., as Master Trustee, Wells Fargo Bank, National Association, as 2005 Revenue Bonds Trustee, U.S. Bank, National Association as 2015 Notes Trustee and 2017 Notes Trustee, Verity MOB Financing LLC and Verity MOB Financing II, LLC.

Note 3
Objections that have been resolved or are now moot are not discussed herein.

Note 4
The Court declines the Debtors' request to strike the sur-reply that SGM filed on August 10, 2020 [Doc. No. 5448]. The Debtors are not prejudiced by the Court's consideration of the sur-reply since the Court has also considered the Debtors' arguments in opposition to the sur-reply contained in the *Debtors' (I) Request to*

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CONT... Verity Health System of California, Inc. **Chapter 11**

Strike or, in the Alternative, Overrule Strategic Global Management, Inc.'s Unauthorized "Surreply" in Support of SGM's Confirmation Objection and (II) Response to Toyon Associates, Inc.'s Evidentiary Objections to the Declaration of Peter C. Chadwick in Support of the Confirmation Brief [Doc. No. 5456].

Party Information

Debtor(s):

Verity Health System of California,	Represented By Samuel R Maizel John A Moe II Tania M Moyron Claude D Montgomery Sam J Alberts Shirley Cho Patrick Maxcy Steven J Kahn Nicholas A Koffroth Kerry L Duffy

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2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#9.00 HearingRE: [5148] Motion to Reject Lease or Executory Contract Debtors Notice of Motion and Sixth Omnibus Motion To Reject, Pursuant To 11 U.S.C. § 365(A), Certain Executory Contracts and Unexpired Leases; Memorandum of Points and Authorities and Declaration of Richard G. Adcock

Docket 5148

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

For the reasons set forth below, the Motion is **GRANTED**.

Pleadings Filed and Reviewed:

1) Debtors' Notice of Motion and Sixth Omnibus Motion to Reject, Pursuant to 11 U.S.C. § 365(a), Certain Executory Contracts and Unexpired Leases [Doc. No. 5148] (the "Motion")
   a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 5148, 5150, 5151, 5152 and 5153 [Doc. No. 5333]
2) Limited Objection of Premier, Inc. to Debtors' Sixth Omnibus Motion to Reject Contracts and Leases [Doc. No. 5264]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California, Inc. ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' Chapter 11 cases are being jointly administered.

The Debtors seek authorization to reject certain executory contracts and unexpired leases (collectively, the "Agreements") pursuant to § 365(a), to which Debtors St. Vincent Medical Center ("SVMC"), Seton Medical Center ("Seton"), St. Francis

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CONT... **Verity Health System of California, Inc.** **Chapter 11**

Medical Center ("SFMC"), or VHS, as applicable, are a party. The Agreements are principally comprised of (1) equipment rental or consignment agreements, (2) certain medical suite and office leases between SVMC, as lessor, and various parties, as lessees, and (3) miscellaneous service and maintenance agreements. The Debtors seek rejection because the assets to which the Agreements pertain have been or are in the process of being sold.

Premier, Inc. ("Premier") filed a limited objection to the Motion. On May 29, 2019, the Court entered an order approving a settlement agreement between the Debtors and Premier (the "Premier Settlement"). Premier does not object to the rejection of the Data Transfer Agreement between SVMC and Premier, provided the order on the Motion specifically states that rejection of the Data Transfer Agreement does not affect the parties' respective continuing obligations under the Settlement Agreement.

II. Findings and Conclusions

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract or unexpired lease:

> In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." …
>
> Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. *See Navellier v. Sletten,* 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Castetter,* 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang,* 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

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Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

The Court finds that the Debtors have shown sufficient cause to reject the Agreements. The Debtors have demonstrated that the Agreements are no longer necessary given that the assets to which the Agreements pertain have been sold or are in the process of being sold. Rejection of the Agreements shall be effective as of **July 20, 2020**, the date of the filing of the Motion.

The deadline for counterparties to the Agreements to file a proof of claim arising from the rejection of the applicable Agreement, pursuant to Bankruptcy Rule 3002(c)(4), shall be **September 28, 2020** (the "Rule 3002(c)(4) Claims Bar Date"). Debtors shall provide notice of the Rule 3002(c)(4) Claims Bar Date so that it is actually received by counterparties no later than **August 19, 2020**. Debtors shall file a proof of service of such notice by no later than **August 19, 2020**.

The deadline for counterparties to retrieve any leased or consigned goods or equipment is **August 31, 2020**. Debtors shall provide notice of the deadline so that it is actually received by counterparties no later than **August 19, 2020**.

Premier's request for a provision in the order on the Motion specifically stating that the rejection of the Data Transfer Agreement does not affect the parties' continuing obligations under the Settlement Agreement is **GRANTED**. The Debtors and Premier shall negotiate appropriate language to this effect.

III. Conclusion

Based upon the foregoing, the Motion is **GRANTED**. Within seven days of the hearing, the Debtors shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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Debtor(s):

Verity Health System of California, Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth
Kerry L Duffy

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2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#10.00 Hearing re [5199] *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 Conditions on the St. Francis Medical Center Sale; and (IV) Granting Related Relief*

Docket 0

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

Before the Court is the Debtors' motion to sell St. Francis Medical Center ("St. Francis"), a not-for-profit hospital, free and clear of regulatory conditions which the California Attorney General claims authority to impose under Cal. Corp. Code §§ 5914 *et seq*. For the reasons set forth below, the Court finds that § 363 of the Bankruptcy Code authorizes a sale free and clear of the conditions which the Attorney General contends he is authorized to impose.

Pleadings Filed and Reviewed:

1) 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 [Doc. No. 5199] (the "Motion")
   a) Order Setting Hearing on Emergency Motion for Entry of an Order Enforcing the Order Authorizing the Sale to Prime Healthcare Services, Inc. [Doc. No. 5206]
2) Opposition of California Attorney General to [Motion] [Doc. No. 5388]

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   a) Errata to Opposition of California Attorney General to [Motion] [Doc. No. 5404]
3) Debtors' Reply to California Attorney General's Opposition to [Motion] [Doc. No. 5423]
4) Order Striking from the Record Prospect Medical's Opposition to the Debtors' Emergency Motion to Enforce the Sale Order [Doc. No. 5401]
   a) Memorandum of Decision Finding that Prospect Medical Lacks Standing to Oppose the Debtors' Emergency Motion to Enforce the Sale Order [Doc. No. 5399]
   b) Prospect Medical's Response to [the Motion] [Doc. No. 5368]

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health System of California, Inc. ("VHS") and certain affiliated entities (collectively, the "Debtors") each filed voluntary Chapter 11 petitions. The Debtors' cases are being jointly administered.

As of the Petition Date, the Debtors operated six acute care hospitals in the state of California. On December 27, 2018, the Court authorized the Debtors to sell two of their hospitals—O'Connor Hospital and Saint Louise Regional Hospital—to Santa Clara County (the "Santa Clara Sale"). **[Note 1]** The Santa Clara Sale closed on February 28, 2019.

A. The 2015 Conditions

In 2015, prior to the commencement of these cases, the Debtors' predecessor sought authorization from the California Attorney General (the "Attorney General"), pursuant to Cal. Corp. Code § 5914, to implement a *System Restructuring and Support Agreement* (the "Restructuring Agreement"). The Attorney General approved the Restructuring Agreement, subject to various conditions (the "2015 Conditions"). Among other things, the 2015 Conditions required St. Francis to (1) maintain specified health services at minimum levels, (2) participate in the Medicare and Medi-Cal programs, (3) provide community benefit programs, (4) provide specified levels of charity care, (5) maintain various county contracts, and (6) assume pension obligations.

B. The Failed SGM Sale

On February 19, 2019, the Court entered an order establishing bidding procedures [Doc. No. 1572] (the "SGM Bidding Procedures Order") for the auction of the

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Debtors' four remaining hospitals—St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center (including St. Vincent Dialysis Center) ("St. Vincent"), and Seton (including Seton Medical Center Coastside ("Seton Coastside")). Under the SGM Bidding Procedures Order, Strategic Global Management, Inc. ("SGM") was designated as the stalking horse bidder. SGM's bid for all four of the hospitals was $610 million. The Bidding Procedures Order approved an Asset Purchase Agreement between the Debtors and SGM (the "SGM APA").

The hospitals were extensively marketed by the Debtors' investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. ("Cain"). Cain notified ninety parties of the auction process. Sixteen of these parties requested continued access to a data room containing information about the hospitals.

Notwithstanding Cain's thorough marketing efforts, the Debtors did not receive any qualified bids for all of the hospitals. The Debtors received one bid to purchase only St. Vincent and one bid to purchase only St. Francis. After consulting with the Official Committee of Unsecured Creditors (the "Committee") and the largest secured creditors, the Debtors determined not to conduct an auction. On May 2, 2019, the Court entered an order finding that SGM was the winning bidder and approving the sale to SGM (the "SGM Sale").

On November 27, 2019, the Court entered a memorandum of decision and accompanying order finding that as of November 19, 2019, all conditions precedent under the SGM APA to SGM's obligation to close the SGM Sale had been satisfied. Doc. Nos. 3723–24. The Court found that pursuant to § 1.3 of the SGM APA, SGM was obligated to close the SGM Sale by no later than December 5, 2019. *Id.* SGM did not close the sale by December 5, 2019. On December 27, 2019, the Debtors sent SGM a notice terminating the SGM APA and asserting that SGM had materially breached the SGM APA. Doc. No. 3899.

C. The Prime Sale

After the SGM Sale failed to close, Cain commenced a new marketing process. In December 2019, Cain began making phone calls to parties who had previously expressed interest in acquiring St. Francis. On January 3, 2020, Cain e-mailed all parties who had previously executed NDAs and explained that the Debtors were initiating another marketing process. Ultimately, 61 parties executed NDAs with respect to the renewed marketing process and were granted access to an online data room.

On January 31, 2020, the Debtors received seven Indications of Interest (the

"IOIs") for the potential acquisition of St. Francis. Cain contacted the seven potential purchasers who submitted the IOIs and continued to work with the purchasers to respond to questions and provide information.

On February 26, 2020, the Court entered an *Order (1) Approving Auction Sale Format and Bidding Procedures; (2) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases* [Doc. No. 4165] (the "Bidding Procedures Order," and the motion for entry of the Bidding Procedures Order, the "Bidding Procedures Motion"). The Bidding Procedures Order established procedures governing the auction (the "Auction") of St. Francis.

The Bidding Procedures Order authorized the Debtors to designate a Stalking Horse Bidder without further order of the Court. The Debtors designated Prime Healthcare Services, Inc. ("Prime") as the Stalking Horse Bidder. The Debtors received bids from potential purchasers, but after consulting with their advisors and the Consultation Parties (as defined in the Bidding Procedures Order), determined that such bids did not constitute Qualified Bids. The Debtors selected Prime as the Winning Bidder and did not conduct the Auction. On April 9, 2020, the Court entered an order authorizing the Debtors to sell St. Francis to Prime. *See* Doc. No. 4511 (the "Sale Order").

The Asset Purchase Agreement under which Prime agreed to purchase St. Francis (the "APA") provided that Prime would close the sale so long as any conditions imposed by the Attorney General under the review process set forth in Cal. Corp. Code §§ 5914 *et seq.* were substantially consistent with conditions that Prime had agreed to accept (the "Approved Conditions"). **[Note 2]** In the event that the Attorney General sought to impose conditions materially different from the Approved Conditions (the "Additional Conditions"), the APA provided that the Debtors would have an opportunity to seek a determination from the Court that the St. Francis could be sold free and clear of the Additional Conditions under § 363(f) of the Bankruptcy Code. Under the APA, Additional Conditions imposing upon Prime costs of $5 million or more are conclusively deemed to be materially different from the Approved Conditions. Prime is not required to close the Sale unless the Debtors obtain an unstayed order authorizing the sale free and clear of the Additional Conditions.

On June 25, 2020, Prime filed *Prime Healthcare's Notice of Acceptance of Additional Attorney General Conditions for Purchase of St. Francis Medical Center*

[Doc. No. 4954] (the "Prime Notice"). Notwithstanding the fact that it was not obligated to do so under the APA, Prime agreed to accept certain of the Additional Conditions that had been recommended in the *Health Care Impact Statement* prepared by JD Healthcare in connection with the Attorney General's review of the sale. Among other things, Prime agreed to (1) maintain cancer services, including radiation oncology, at existing levels for at least the next ten years, (2) maintain the pediatric behavioral counseling clinic located at 4390 Tweedy Avenue, South Gate, CA 90280, (3) maintain the multi-specialty clinic located at 3628 East Imperial Highway, Ste. 103, Lynwood, CA 90262, and (4) maintain the American Career College program for onsite training for at least five years from the closing date.

On July 16, 2020, the Attorney General consented to the sale, but conditioned his consent upon Prime's adherence to a new set of conditions (the "2020 Conditions"). The 2020 Conditions include numerous Additional Conditions materially different from the Approved Conditions. On July 21, 2020, Prime sent a letter to the Attorney General, requesting an opportunity to meet and confer regarding a potential consensual resolution with respect to the Additional Conditions. On July 24, 2020, Prime confirmed that it agreed to accept all but three of the Additional Conditions—charity care amount, the community benefit services commitment, and the continuation of an Affiliation Agreement for physicians in post-graduate training. Prime and the Attorney General have been unable to reach an agreement with respect to these three Additional Conditions.

The differences between the charity care and community benefit payments Prime has agreed to accept, and the payments which the Attorney General asserts must be made, are set forth in the following table:

Condition	**Terms Acceptable to Prime**	**Terms Asserted by Attorney General**	**Difference**
Charity care amount	$8 million per year for six years	$10,186,173 per year for six years	$13.117 million over six years
Community benefit services amount	$1,139,301 per year for six years	$1,597,077 per year for six years	$2.747 million over six years

The third condition in dispute is the Attorney General's requirement that Prime accept an Affiliation Agreement for physicians in post-graduate training. Under the Affiliation Agreement, one post-graduate fellow rotates through St. Francis' trauma center for one month, twice per year. Prime opposes this condition because it would prevent Prime from establishing a robust post-graduate resident training program due to certain regulations.

Prime will not close the sale absent an order finding that St. Francis can be sold free and clear of the Additional Conditions pursuant to § 363(f). If the sale does not close, the most likely outcome will be the closure of St. Francis. The Debtors incur operational losses of approximately $450,000 for each day that the sale does not close. Chadwick Decl. [Doc. No. 5199] at ¶ 7. The Debtors do not have sufficient cash on hand to conduct another sale of St. Francis. *Id.*

It is against this backdrop that the Debtors move for authorization to sell the St. Francis free and clear of the Additional Conditions, pursuant to § 363(f). The Debtors argue that the Additional Conditions constitute an "interest in property" within the meaning of § 363(f), and that a sale free and clear of the Additional Conditions may be authorized under § 363(f)(1), (4), or (5), for the following reasons:

- Pursuant to § 363(f)(1), St. Francis may be sold under applicable nonbankruptcy law, because under California law, the purchaser of assets does not assume successor liability.
- Pursuant to § 363(f)(4), the validity of the Additional Conditions is subject to a *bona fide* dispute, because the Attorney General abused his discretion in imposing the Additional Conditions.
- Pursuant to § 363(f)(5), the Attorney General could be compelled to accept a money satisfaction of certain of the Additional Conditions, such as the condition that Prime provide specified levels of charitable care.

In addition, the Debtors assert that imposition of the Additional Conditions violates § 525, which prohibits government entities from discriminating against debtors who have failed to pay dischargeable debts when issuing licenses. According to the Debtors, the Additional Conditions constitute an attempt by the Attorney General to collect a dischargeable debt. The Debtors' theory is that Attorney General's refusal to approve the sale absent imposition of the Additional Conditions amounts to the discriminatory denial of licensure in contravention of § 525.

The Attorney General opposes the Motion. He argues that because the Debtors are non-profit entities, the sale is governed exclusively by § 363(d)(1), and that § 363(f) does not apply. The Attorney General denies that he abused his discretion in imposing the Additional Conditions. He notes that he considered an extensive record in arriving at the Additional Conditions, and states that Prime's unwillingness to accept the

Additional Conditions does not mean that his decision to impose them was an abuse of discretion.

II. Findings of Fact and Conclusions of Law

Section 363(d)(1) authorizes non-profit entities, such as the Debtors, to sell estate assets only if the sale is "in accordance with nonbankruptcy law applicable to the transfer of property by" a non-profit entity. Section 541(f) similarly provides that property held by debtors that are § 501(c)(3) corporations under the Internal Revenue Code may be transferred, but "only under the same conditions as would apply if the debtor had not filed a case under this title." Section 363(b) authorizes the Debtors to sell estate property out of the ordinary course of business, subject to court approval. The Debtors must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Section 363(f) provides that a sale of estate property may be "free and clear of any interest in such property of an entity other than the estate," provided that certain conditions are satisfied.

A. The Additional Conditions are an "Interest in Property" Within the Meaning of § 363(f)

As this Court has previously explained:

> The Bankruptcy Code does not define the phrase "interest in ... property" for purposes of § 363(f). The Third Circuit has held that the phrase "interest in ... property" is "intended to refer to obligations that are connected to, or arise from, the property being sold." *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000). That conclusion is echoed by *Collier on Bankruptcy*, which observes a trend in caselaw "in favor of a broader definition [of the phrase] that encompasses other obligations that may flow from ownership of the property." 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 363.06[1] (16th ed. 2017).
>
> Courts have held that interests in property include monetary obligations arising from the ownership of property, even when those obligations are imposed by statute. For example, in *Mass. Dep't of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. BAP 2013), the court held that taxes assessed by Massachusetts under its unemployment

> insurance statutes constituted an "interest in ... property." The taxes were computed based on the Debtor's "experience rating," which was determined by the number of employees it had terminated in the past. *Id.* at 862. Because the Debtor had terminated most of its employees prior to selling its assets, its experiencing rating, and corresponding unemployment insurance tax liabilities, were very high. *Id.* The *PBBPC* court held that the experience rating was an interest in property that could be cut off under § 363(f). *Id.* at 869–70. Similarly, in *United Mine Workers of Am. Combined Benefit Fund v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 581, the court held that monetary obligations imposed by the Coal Industry Retiree Health Benefit Act of 1992 constituted an "interest in ... property" within the meaning of § 363(f).

In re Gardens Reg'l Hosp. & Med. Ctr., Inc., 567 B.R. 820, 825–26 (Bankr. C.D. Cal. 2017), *appeal dismissed,* No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018) ("*Gardens I*").

The Additional Conditions are an "interest in property" within the meaning of § 363(f). First, the Additional Conditions are monetary obligations arising from the ownership of property. Similar to the "experience rating" at issue in *PBBPC, Inc.*, the Additional Conditions were calculated based upon St. Francis' prior operating history. Among other things, the Additional Conditions require that Prime furnish specified levels of charity care and community benefit services. The required service levels have been set based upon St. Francis' historical operations.

Second, the Attorney General's statutory authority to impose the Additional Conditions arises from the Debtors' operation of St. Francis as a non-profit entity. Had the Debtors not operated St. Francis in this manner, there could be no contention that the Prime Sale is subject to the Attorney General's review pursuant to Cal. Corp. Code § 5914. In this sense as well, the Additional Conditions "arise from the property being sold," *In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3d Cir. 2003), and therefore qualify as an "interest in … property" within the meaning of § 363(f).

Third, the Attorney General is barred by the law of the case doctrine from asserting that the Additional Conditions are not an "interest in … property." "Under the 'law of the case' doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case." *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir.), *amended,* 860 F.2d 357 (9th Cir. 1988). "For the doctrine to apply, the issue in question must have been

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'decided explicitly or by necessary implication in [the] previous disposition.'" *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000).

In connection with the Santa Clara Sale, the Court addressed the exact issue presented here—whether conditions that the Attorney General sought to impose upon the sale constituted an "interest in … property" for purposes of § 363(f). **[Note 3]** The Attorney General litigated the issue, and the Court overruled the Attorney General's arguments. **[Note 4]** The Attorney General voluntarily dismissed his appeal of the order finding that the conditions he sought to impose were an "interest in … property." The law of the case doctrine bars relitigation of the issue.

The Attorney General's new argument that the Additional Conditions are not an interest in property because a sale involving a non-profit debtor is governed exclusively by § 363(d), and not § 363(f), is also barred by the law of the case doctrine. The Attorney General could have made this argument in connection with the prior litigation, but he did not do so. The Court's prior decision implicitly rejected the theory that § 363(f) does not apply to a sale involving a non-profit debtor.

The doctrine of issue preclusion is a further bar to any attempt by the Attorney General to contest the Additional Conditions' status as an "interest in … property." As explained by the Supreme Court, issue preclusion forecloses "'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim." *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S. Ct. 2161, 2171, 171 L. Ed. 2d 155 (2008) (internal citations omitted). The doctrine protects "against 'the expense and vexation attending multiple lawsuits, conserve[s] judicial resources, and foster[s] reliance on judicial action by minimizing the possibility of inconsistent decisions.'" *Id.* Issue preclusion applies if "(1) the issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits." *Howard v. City of Coos Bay*, 871 F.3d 1032, 1041 (9th Cir. 2017).

The Attorney General has litigated the issue presented here, both in connection with the Santa Clara Sale and in connection with a sale in *Gardens I* (the "Gardens Sale"). Just as he did in the Santa Clara Sale, the Attorney General claimed in the Gardens Sale the regulatory authority to impose conditions. The Court found that the Attorney General's claim to regulatory authority was an "interest in … property" for purposes of § 363(f). *Gardens I*, 567 B.R. at 826. The Attorney General is precluded from relitigating the issue of whether his claimed authority to impose conditions on the SGM Sale is an "interest in … property."

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B. The Debtors May Sell the Hospitals Free and Clear of the Additional Conditions Pursuant to § 363(f)(1)

Sale of St. Francis may be free and clear of the Additional Conditions only upon satisfaction of one or more of the five disjunctive sub-factors set forth in § 363(f). Under § 363(f)(1), a sale free and clear may be approved if permitted by applicable nonbankruptcy law.

Applicable nonbankruptcy law permits a sale free and clear for two reasons. First, the Attorney General's attempt to impose the Additional Conditions upon Prime is equivalent to an attempt to impose successor liability upon Prime. California law does not authorize the imposition of successor liability upon Prime under these circumstances. Second, even if the Attorney General were authorized to impose successor liability under California law, the Attorney General abused his discretion in imposing the Additional Conditions, meaning that the Additional Conditions must be set aside.

1. California Law Does Not Authorize the Attorney General to Impose Successor Liability Upon Prime

i. The Additional Conditions Qualify as Successor Liability

The Attorney General's attempt to impose the Additional Conditions upon Prime qualifies as an attempt to impose successor liability upon Prime. The reason is that the Additional Conditions impose upon Prime many of the same obligations imposed upon the Debtors by the 2015 Conditions. By attempting to enforce the Additional Conditions, the Attorney General is attempting to enforce the obligations imposed by the 2015 Conditions against Prime.

It is true that the 2015 Conditions are not identical to the Additional Conditions. Under the 2015 Conditions, St. Francis was required to provide annual charity care in an amount equal to or greater than $16,646,323; the charity care amount under the Additional Conditions is $10,186,173 annually. The community benefit requirement under the 2015 Conditions was $1,362,680 annually; under the Additional Conditions, the amount is $1,597,077 annually.

Considered within the overall scope of the obligations imposed, the differences between the 2015 Conditions and the Additional Conditions are comparatively inconsequential. The Additional Conditions still qualify as successor liability even though they are not exactly identical to the 2015 Conditions.

The Additional Conditions cannot be appropriately categorized as Prime's obligation to comply with applicable law on a going-forward basis, rather than as successor liability. For example, the Additional Conditions are unlike environmental remediation obligations that are not successor liability given that any entity purchasing contaminated property has an obligation to comply with environmental law. The distinction can be illustrated by an examination of the court's discussion of environmental remediation obligations in *In re Gen. Motors Corp.*:

> Under section 363(f), there could be no successor liability imposed on the purchaser for the [seller's] … monetary obligations related to cleanup costs, or any other obligations that were obligations of the seller. But the purchaser would have to comply with its environmental responsibilities starting with the day it got the property, and if the property required remediation as of that time, any such remediation would be the buyer's responsibility …. Those same principles will be applied here. Any Old GM properties to be transferred will be transferred free and clear of successor liability, but New GM will be liable from the day it gets any such properties for its environmental responsibilities going forward.

407 B.R. 463, 508 (Bankr. S.D.N.Y. 2009).

The key difference between the contaminated property at issue in *General Motors* and the present situation is that *any* entity that purchased the contaminated property at issue in *General Motors* would have been required to comply with environmental regulations going forward. Environmental compliance obligations would not vary based upon the identity of the purchaser or seller. Here, by contrast, whether a purchaser is obligated to comply with Attorney General conditions can vary, depending upon either the identity of the purchaser or the identity of the seller. There is no general obligation imposed upon an entity that purchases a hospital in the State of California to operate that hospital in accordance with conditions asserted by the Attorney General. The Attorney General's regulatory authority applies only to non-profit hospitals, and only to certain types of sale transactions. Had the Hospitals been sold to a public entity, such as the County of Los Angeles, the Attorney General could not have reviewed the sale. *See Verity I*, 598 B.R. at 294 (holding that Cal. Corp. Code § 5914 did not apply where non-profit hospitals were sold to a public entity). Had St. Francis been operated by a for-profit entity, the Attorney General could not have reviewed the sale. *See* Cal. Corp. Code § 5914(a) (requiring only nonprofit corporations to submit the sale of assets to Attorney General review).

Because the obligation to comply with the Additional Conditions is contingent upon the identity of the purchaser and the identity of the seller, the conditions cannot fairly be characterized as the purchaser's obligation to comply with applicable law on a going-forward basis. The Attorney General can claim authority to impose the Additional Conditions upon purchaser Prime only because the Debtors operated the St. Francis as a non-profit. Since the Attorney General's alleged authority to impose the Additional Conditions derives from the manner in which the Debtors operated St. Francis, the Additional Conditions are appropriately characterized as successor liability.

ii. Successor Liability Cannot Be Imposed Under California Law

Under California law, the general rule is "that where a corporation purchases, or otherwise acquires by transfer, the assets of another corporation, the acquiring corporation does not assume the selling corporation's debts and liabilities." *Fisher v. Allis-Chalmers Corp. Prod. Liab. Tr.*, 95 Cal. App. 4th 1182, 1188, 116 Cal. Rptr. 2d 310, 315 (2002). The general rule does not apply if "(1) there is an express or implied agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts." *Id.*

None of the exceptions to the general rule are present here. First, Prime has not agreed to assume the Additional Conditions, either expressly or by implication. Second, the Prime Sale is not a consolidation or merger of the Debtors and Prime. A sale transaction is a consolidation or merger of two corporations "where one corporation takes all of another's assets without providing any consideration that could be made available to meet claims of the other's creditors or where the consideration consists wholly of shares of the purchaser's stock which are promptly distributed to the seller's shareholders in conjunction with the seller's liquidation." *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28, 560 P.2d 3 (1977) (internal citations omitted). Neither factor applies. Prime is paying for the Hospitals in cash (not stock), and that cash will be distributed to the Debtors' creditors through a plan of liquidation. Third, Prime is not a mere continuation of the Debtors. A purchaser is a mere continuation of a seller if there is inadequate consideration for the purchaser or if one or more persons are officers, directors, or stockholders or both corporations. *Id.* Consideration for the Prime Sale is adequate and no officers or directors of the Debtors are officers or directors of Prime. **[Note 5]** Fourth, the Debtors are not selling St. Francis for the purpose of escaping liabilities for their debts. In fact, the opposite is true—the objective of the Prime Sale is to generate proceeds to pay the Debtors' debts through a liquidating Plan. In sum, successor liability cannot be imposed on Prime under California common law.

Successor liability cannot be imposed under Cal. Corp. Code §§ 5914–5919. Cal. Corp. Code § 5914 authorizes the Attorney General to review transactions in which a non-profit healthcare facility seeks to transfer a material amount of its assets to a for-profit entity, and provides in relevant part:

> Any nonprofit corporation that is defined in Section 5046 and operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:
>
> (A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

Cal. Corp. Code § 5914(a)(1) (West).

The "Attorney General shall have discretion to consent to, give conditional consent to, or not consent to" the transaction. Cal. Corp. Code § 5917.

Nothing within the statute authorizes the Attorney General to impose successor liability upon Prime, the for-profit entity that purchased the healthcare assets from the non-profit Debtors. Under the statute, the Attorney General is authorized to review transactions entered into by a "nonprofit corporation that … operates or controls a health facility," Cal. Corp. Code § 5914(a)(1), and to "consent to, give conditional consent to, or not consent to" any such transactions, Cal. Corp. Code § 5917. These provisions do not grant the Attorney General authority to impose going-forward obligations on the assets that are the subject of the transaction. That is, the statute does not provide that the healthcare assets themselves are subject to regulation by the

Attorney General. Rather, it is the non-profit status of the entity operating the healthcare assets that triggers the Attorney General's regulatory authority. Upon transfer of the healthcare assets from the non-profit entity to the for-profit entity, the Attorney General's regulatory authority over the assets terminates.

The issue of the Attorney General's authority to impose successor liability arose in the case of *La Paloma Generating Co.*, No. 16-12700, 2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017). In *La Paloma*, the debtor operated a power plant subject to a cap-and-trade emissions regulation. The regulation required "Covered Entities"—defined as entities engaging in operations that generated emissions—to surrender "Compliance Instruments" equal to the amount of emissions generated at specified times. At issue was whether a power plant could be sold "free and clear of, and without the purchaser assuming, any obligation to surrender compliance instruments under the California Cap-and-Trade Program for emissions generated by the Debtors and/or their facility during the period before the transfer of the assets." *Id.* at *2. The court found that "[u]nder the Regulation, only entities—and not assets—are Covered Entities" subject to the obligation to surrender Compliance Instruments. *Id.* at *5. As a result, the court found, the debtors could sell the power plant free and clear of the surrender obligations, pursuant to § 363(f)(1). *Id.* at *8. The court reasoned that the regulation did not impose successor liability on the purchaser, because it imposed liability only on "Covered Entities," and the purchaser would not become a Covered Entity until after it acquired the power plant. *Id.* at *7–*8. The regulation, the court held, was limited to Covered Entities, and could not be used to "impugn liability on the purchaser of … the Covered Entity's assets." *Id.* at *8.

With respect to the imposition of successor liability, the statute at issue here operates in the same manner as the regulation examined in *La Paloma*. Similar to the regulation in *La Paloma*, Cal. Corp. Code § 5914–5919 permits the imposition of liability upon St. Francis only because it is operated by a non-profit entity. That is, independent of the fact that it is operated by a non-profit entity, nothing within Cal. Corp. Code § 5914–5919 authorizes the Attorney General to impose liabilities upon the St. Francis. Further, the Attorney General's regulatory authority under the statute does not extend to for-profit entities. As was the case in *La Paloma*, Cal. Corp. Code §5914–5919 does not authorized the Attorney General to impose liability upon Prime, the for-profit purchaser of St. Francis.

<u>2. Even if California Law Allowed the Attorney General to Impose Successor Liability Upon Prime, the Attorney General Abused his Discretion in Imposing the</u>

Additional Conditions

As set forth below, the Court finds that the Attorney General's decision to impose the Additional Conditions is subject to judicial review by administrative mandate under California law. This Court is empowered to conduct such judicial review pursuant to § 1221(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), which provides:

> Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

Pub. L. No. 109-8, § 1221(e) (2005). **[Note 6]** *See also In re HHH Choices Health Plan, LLC*, 554 B.R. 697, 700 (Bankr. S.D.N.Y. 2016) (construing New York state law to determine the appropriate disposition of a non-profit debtor's assets).

Upon review of the Attorney General's decision, the Court finds that the imposition of the Additional Conditions constituted an abuse of discretion, for the reasons explained below. Therefore, the Additional Conditions must be set aside, which means that the Debtors are authorized to sell St. Francis free and clear of the Additional Conditions under applicable nonbankruptcy law.

i. The Attorney General's Imposition of the Additional Conditions is Subject to Judicial Review by Administrative Mandate

Cal. Civ. Proc. Code § 1094.5 provides for judicial review by administrative mandate of decisions made by agencies or officers of the State of California. A writ of mandate may be issued if the agency or officer making the decision engaged in a "prejudicial abuse of discretion." Cal. Civ. Proc. Code § 1094.5(b). An "abuse of discretion is established if … the order or decision is not supported by the findings, or the findings are not supported by the evidence." *Id.*

The Attorney General contends that administrative mandamus review is not available because the Additional Conditions were not issued subsequent to "a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal." Cal. Civ. Proc. Code § 1094.5(a). The Attorney General acknowledges that he conducted "public meetings … to hear comments from interested parties" as required by Cal. Corp. Code § 5922. However, the Attorney General asserts that such public meetings were not "hearings" within the meaning of Cal. Civ. Proc. Code § 1094.5(a), because public comments were not presented under oath and no effort was made to determine the accuracy of the information offered by members of the public. The Attorney General's position is that the Debtors are entitled only to traditional mandamus review under Cal. Civ. Proc. Code § 1085.

"Quasi-legislative acts are ordinarily reviewed by traditional mandate, and quasi-judicial acts are reviewed by administrative mandate. 'Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts.'" *Friends of the Old Trees v. Dep't of Forestry & Fire Prot.*, 52 Cal. App. 4th 1383, 1389, 61 Cal. Rptr. 2d 297, 303 (1997) (internal citation omitted).

The Court is not persuaded by the Attorney General's contention that administrative mandamus review is unavailable to the Debtors. In reviewing the Prime Sale, the Attorney General hired JD Healthcare, Inc. to prepare an expert report containing information on how the Prime Sale would affect the availability of healthcare services in the region served by St. Francis.

The JD Healthcare expert report contains recommendations regarding the conditions that the Attorney General should impose on the Prime Sale. Upon receiving the expert report, the Attorney General asked the Debtors and Prime to respond to the conditions recommended by JD Healthcare. The Attorney General conducted meetings at which members of the public commented on the Prime Sale. "[P]urely documentary proceedings can satisfy the hearing requirement of Code of Civil Procedure § 1094.5, so long as the agency is required by law to accept and consider evidence from interested parties before making its decision." *Friends of the Old Trees*, 52 Cal. App. 4th at 1391–92. A "trial-type hearing" is not necessary. *Id.* at 1392.

The Attorney General's review involved "the actual application of … a rule to a specific set of existing facts." *Friends*, 52 Cal. App. 4th at 1389. The Attorney General received evidence from JD Healthcare, heard comments from members of the public, and elected to impose the Additional Conditions after considering all the evidence collected during the review process. The Attorney General's review of the Prime Sale was a quasi-judicial act subject to review by administrative mandate.

The Attorney General next asserts that administrative mandamus review is unavailable because the Debtors have failed to produce the complete administrative record supporting the Attorney General's decision. This contention is without merit. For purposes of administrative mandamus review, a partial record is sufficient if it "accurately represent[s] the administrative proceedings, provide[s] the reviewing court with an understanding of what occurred below, and enable[s] that court to undertake an independent judicial review of the administrative decision." *Elizabeth D. v. Zolin*, 21 Cal. App. 4th 347, 349, 25 Cal. Rptr. 2d 852 (1993). The record before the Court consists of the expert report prepared by JD Healthcare and letters from the Debtors and Prime responding to the Attorney General's request for a list of Additional Conditions that would be "deal breakers." It is not possible for the Debtors to submit the complete record to the Court because that record is in the sole possession of the Attorney General. In contrast to the prior hearing in connection with the failed SGM Sale involving the same issues, the Attorney General made the decision not to include in his opposition excerpts of the public meeting transcript—perhaps in a tactical attempt to defeat the Debtors' request for administrative mandamus review. At any rate, the record on file is sufficient to provide the Court with an understanding of the reasons for the Attorney General's decision.

There are two tests for judicial review by administrative mandate. "The 'independent judgment' rule applies when the decision of an administrative agency will substantially affect a fundamental vested right." *Mann v. Dep't of Motor Vehicles*, 76 Cal. App. 4th 312, 320, 90 Cal. Rptr. 2d 277, 283 (1999). Under the "independent judgment" rule, the Court must "begin its review with a presumption of the correctness of administrative findings, and then, after affording the respect due to these findings, exercise independent judgment in making its own findings." *Fukuda v. City of Angels*, 20 Cal. 4th 805, 819, 977 P.2d 693, 701 (1999). "[T]he presumption provides the trial court with a starting point for review but it is only a presumption, and may be overcome. Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." *Id.*

"The 'substantial evidence' rule applies when the administrative decision neither involves nor substantially affects a vested right. The trial court must then review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law …." *Mann*, 76 Cal. App. 4th 312, 320, 90 Cal. Rptr. 2d 277, 283 (1999).

To determine whether an administrative decision affects a fundamental vested right, the Court examines "whether the affected right is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking *judicial* power." *Interstate Brands v. Unemployment Ins. Appeals Bd.*, 26 Cal. 3d 770, 779, 608 P.2d 707, 713 (1980) (emphasis in original). An administrative decision that would have the effect of shutting down a business affects a fundamental vested right.

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See, e.g., *The Termo Co. v. Luther*, 169 Cal. App. 4th 394, 407–08, 86 Cal. Rptr. 3d 687, 697 (2008) ("The implementation of the Order and Decision would have the effect not only of shutting down a business that has been in existence for 20 years or more, but also of terminating the right to produce oil—an extraordinarily valuable resource, especially in the current economic era…. Certainly, a fundamental vested right is at issue."); *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1529, 8 Cal. Rptr. 2d 385, 391 (1992) (holding that "the right to continue operating an established business in which [the owner] has made a substantial investment" is a fundamental vested right).

Imposition of the Additional Conditions will precipitate the collapse of the Prime Sale and likely lead to the closing of St. Francis. The Debtors' right to preserve St. Francis' operations, by means of a sale to Prime, is a fundamental vested right that is abrogated by the Attorney General's attempt to impose the Additional Conditions. Consequently, the Court reviews the Attorney General's decision under the independent judgment test.

ii. In Imposing the Additional Conditions, the Attorney General Abused His Discretion

Under certain circumstances, the sale of a not-for-profit healthcare facility is subject to review by the Attorney General. Cal. Corp. Code § 5914. The Legislature enacted Cal. Corp. Code § 5914 to ensure that the public was not deprived of the benefits of charitable health facilities as a result of the transfer of those facilities' assets to for-profit entities. In enacting § 5914, the Legislature found:

> Charitable, nonprofit health facilities have a substantial and beneficial effect on the provision of health care to the people of California, providing as part of their charitable mission uncompensated care to uninsured low-income families and under-compensated care to the poor, elderly, and disabled.
>
> Transfers of the assets of nonprofit, charitable health facilities to the for-profit sector, such as by sale, joint venture, or other sharing of assets, directly affect the charitable use of those assets and may affect the availability of community health care services….
>
> It is in the best interests of the public to ensure that the public interest is fully protected whenever the assets of a charitable nonprofit health facility are transferred out of the charitable trust and to a for-profit or mutual benefit entity.

1996 Cal. Legis. Serv. Ch. 1105 (A.B. 3101) (West).

The Attorney General has "discretion to consent to, give conditional consent to, or not consent to" the sale of a healthcare facility. Cal. Corp. Code § 5917. In exercising that discretion, the Attorney General "shall consider any factors that the Attorney General deems relevant," including but not limited to whether any of the following apply:

a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.
b) The agreement or transaction will result in inurement to any private person or entity.
c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, "fair market value" means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.
d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.
e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.
f) The agreement or transaction involves or constitutes any breach of trust.
g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.
h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.
i) The proposed agreement or transaction is in the public interest.
j) The agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility in the affected community.

Cal. Corp. Code § 5917 (West).

Nothing in the record indicates that Prime's bid was other than for fair market value (factor (c)). St. Francis was thoroughly marketed by Cain Brothers. Prime was the only bidder interested in purchasing the Hospitals. The Court must presume that a bid submitted after extensive marketing reflects the St. Francis fair market value. *See Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 457, 119 S. Ct. 1411, 1423, 143 L. Ed. 2d 607 (1999) (stating that "the best way to determine value is exposure to a market"). **[Note 7]**

There is no indication that Prime, or any other party, took any actions to decrease the value of St. Francis (factor (d)). In view of the extensive marketing, the terms of the sale are fair and reasonable (factor (a)). There is no evidence that any of the parties involved in the Prime Sale have engaged in any conduct that would amount to a breach of trust (factor (f)), or that the Prime Sale will inure to the benefit of any private person or entity (factor (b)). Nor has there been any suggestion that the Debtors failed to provide the Attorney General with sufficient information to evaluate the Prime Sale (factor (g)). Factor (e) does not apply, because the proceeds of the Prime Sale are fully encumbered by the claims of creditors, leaving no remaining equity that could be devoted to charitable purposes.

The remaining factors are (1) the effect of the Prime Sale on the accessibility of healthcare services (factor (h)) and cultural interests (factor (j)) in the affected communities and (2) whether the Prime Sale is in the public interest (factor (i)). Applying the independent judgment standard of review, the Court finds that in electing to impose the Additional Conditions, the Attorney General abused his discretion with respect to these factors.

The Prime Sale will not close if the Additional Conditions are imposed. The most likely result of the failure of the Prime Sale will be the closure of St. Francis. Therefore, imposition of the Additional Conditions will dramatically reduce, rather than preserve, the availability of healthcare services. That is not in the public interest.

Having overseen the Debtors' bankruptcy cases since their inception, the Court has become intimately familiar with the Debtors' operational and cash flow situation. The Court does not view the Debtors' representations regarding the likely closure of St. Francis as an idle threat.

The Court understands that the Additional Conditions were imposed with the laudable objective of increasing the amount of healthcare services provided by St. Francis. The Court can only assume that the Attorney General does not believe the representation that imposition of the Additional Conditions will result in a collapse of the Prime Sale. Unfortunately, the dire economic circumstances in which the Debtors now find themselves leaves the Court with little doubt that if the Prime Sale is not completed, St. Francis will almost certainly close. The Debtors have already been required to close one of their hospitals, St. Vincent Medical Center, as the result of the failure of the SGM Sale.

Because the Additional Conditions will reduce health care services by resulting in the closure of St. Francis, imposition of the Additional Conditions was an abuse of the Attorney General's discretion.

Outside of bankruptcy, the finding that the Attorney General abused his discretion would result in the entry of a judgment commanding the issuance of a peremptory writ of mandate, followed by the issuance of the writ. The writ would command the Attorney General to set aside the Additional Conditions, and would further command the Attorney General to exercise his discretion with respect to the review of the Prime Sale in a lawful manner. *See, e.g.*, *California Hosp. Assn. v. Maxwell-Jolly*, 188 Cal. App. 4th 559, 570, 115 Cal. Rptr. 3d 572, 581 (2010), *as modified on denial of reh'g* (Sept. 16, 2010).

BAPCPA § 1221(e) compels a different result inside bankruptcy. Section 1221(e) provides that the Court is not required "to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property." In *In re HHH Choices Health Plan*, the Bankruptcy Court relied upon BAPCPA § 1221(e) to conclude that it had the authority to interpret a New York law governing the transfer of the assets of a non-profit entity. The court observed that "[i]n the case of an insolvent not-for-profit corporation, section 511 of the New York Not-For-Profit Corporation Law ordinarily, would require the approval of the New York State Supreme Court for a transfer of assets." *HHH Choices Health Plan*, 554 B.R. at 700. The court rejected arguments advanced by certain of the parties "that the ordinary state court procedures must still be followed" with respect to the transfer of the assets. *Id.* Instead, the court held that substantive state law requirements remained applicable, but that it was the Bankruptcy Court that had authority to apply those requirements. *Id.*

Pursuant to BAPCPA § 1221(e), and consistent with the ruling in *HHH Choices Health Plan*, the Court is not required to issue a judgment and writ commanding the Attorney General to set aside the Additional Conditions, and is not required to remand these proceedings to allow the Attorney General to conduct a further review of the Prime Sale in light of the Court's finding that the Attorney General abused his discretion. Instead, the Court is empowered to apply Cal. Corp. Code § 5914, and to determine the conditions under which the Debtors may sell St. Francis to Prime.

Under the circumstances presented here, the only way that the Prime Sale can close, and the closure of St. Francis can be avoided, is if a sale not subject to the Additional Conditions is approved. A decision by the Attorney General to not consent to the sale, or a decision to consent to the sale subject to the Additional Conditions, would constitute an abuse of discretion.

In reaching this conclusion, the Court is not limiting or controlling the discretion vested in the Attorney General, in contravention of Cal. Code Civ. Proc. § 1094.5(f). St. Francis has been financially distressed for years. A $100 million capital infusion made in connection with the 2015 Restructuring Agreement failed to stabilize St. Francis' operations. A further capital infusion of $148 million in 2017 failed to restore St. Francis to financial health. This demonstrates that it was not possible to successfully operate St. Francis subject to the 2015 Conditions. It should come as no surprise that no buyer exists that is willing to purchase and operate the Hospitals if operations are constrained by Additional Conditions that are substantially similar to the 2015 Conditions. The Attorney General's continued attempts to impose conditions rendering sustainable operation of the Hospitals impossible amounts to an abuse of discretion.

The Attorney General contends that Prime, by refusing to purchase and operate the Hospitals subject to the Additional Conditions, is attempting to divest the Attorney General of his regulatory authority by forcing him to accede to a transaction on Prime's terms. This argument ignores the financial and operational realities facing St. Francis. Prime's refusal to accept the Additional Conditions is not an attempt to blackmail the Attorney General into approving the sale. Such refusal is instead dictated by economic reality.

iii. Even if the Attorney General's Decision is Subject to Traditional Mandamus Review Under Cal. Civ. Proc. Code § 1085, Imposition of the Additional Conditions Was an Abuse of Discretion

Even if the Attorney General's review of the sale transaction is a quasi-legislative decision, subject to traditional mandamus review under Cal. Civ. Proc. Code § 1085, the decision to impose the Additional Conditions was an abuse of discretion.

Under Cal. Civ. Proc. Code § 1085, a traditional mandate "may issue to correct the exercise of discretionary legislative power, *but only* if the action taken is so palpably unreasonable and arbitrary as to show an abuse of discretion as a matter of law." *Carrancho v. California Air Res. Bd.*, 111 Cal. App. 4th 1255, 1265, 4 Cal. Rptr. 3d 536, 545 (2003) (emphasis in original). In reviewing quasi-legislative decisions, the "authority of the court is limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair." *Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.*, 32 Cal. 3d 779, 786, 654 P.2d 168, 172 (1982). The Court must ensure that the agency or officer making the decision "has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." *W. States Petroleum Assn. v. Superior Court*, 9 Cal. 4th 559, 577, 888 P.2d 1268, 1277 (1995). Traditional mandamus review of a quasi-legislative decision is therefore more deferential than administrative mandamus review of a quasi-judicial decision under the independent judgment standard.

Even applying this more deferential standard of review, the Court finds that the decision to impose the Additional Conditions was an abuse of discretion, and that a proper exercise of discretion required the Attorney General to consent to the sale without seeking to impose the Additional Conditions. Preservation of access to healthcare is one of the factors the Attorney General must consider in reviewing the transaction. *See* Cal. Corp. Code § 5917(h) (requiring the Attorney General to consider whether the "agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community"). The effect of the Additional Conditions will be the closure of St. Francis, which will significantly reduce access to healthcare. There is no "rational connection" between the purpose of the Additional Conditions (preserving healthcare access) and the actual results of the conditions (a severe reduction in healthcare access). *See W. States Petroleum Ass'n*, 888 P.2d at 1277. The Attorney General's decision will destroy the very charitable assets that he is charged with protecting.

In sum, regardless of whether the Debtors are entitled to review of the Attorney General's decision under traditional mandamus or administrative mandamus, the Attorney General's decision to impose the Additional Conditions was an abuse of discretion. In the unique circumstances of this case, the Attorney General was required to consent to the Prime Sale without imposing the Additional Conditions. As a result, sale of St. Francis to Prime free and clear of the Additional Conditions is authorized under applicable nonbankruptcy law. The Court approves the Prime Sale, free and clear of the Additional Conditions, pursuant to § 363(f)(1).

C. The Debtors May Sell St. Francis Free and Clear of the Additional Conditions Pursuant to § 363(f)(4)

Under § 363(f)(4), St. Francis may be sold free and clear of the Additional

Conditions provided the Additional Conditions are "in bona fide dispute …" A bona fide dispute exists if "there is an objective basis for either a factual or legal dispute as to the validity" of the interest at issue. *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). The court "court need not determine the probable outcome of the dispute, but merely whether one exists." *Id.*

The Debtors dispute the Attorney General's authority to impose the Additional Conditions, on the grounds that the (1) Additional Conditions attempt to impose successor liability in a manner not authorized under California law and that (2) the Attorney General abused his discretion in issuing the Additional Conditions. As discussed above, the Debtors have shown that the Attorney General cannot impose the Additional Conditions for both of these reasons. The Debtors have easily satisfied § 363(f)(4), which does not require the Debtors to show that they will prevail upon the dispute—only that a dispute exists.

With respect to the charity care and community benefit conditions, a bona fide dispute exists for yet another reason. The Debtors have shown that by imposing these conditions, the Attorney General violated § 525.

Section 525 provides in relevant part:

> [A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title … or another person with whom such … debtor has been associated, solely because such … debtor is or has been a debtor under this title … or has not paid a debt that is dischargeable in the case under this title ….

In *In re Aurora Gas, LLC*, the court held that the State of Alaska violated § 525 by refusing to approve the debtor's sale of oil and gas leases unless the purchaser posted a bond of $6 million to pay for the cost of plugging abandoned wells that the purchaser was not acquiring. *In re Aurora Gas, LLC*, No. A16-00130-GS, 2017 WL 4325560 (Bankr. D. Alaska Sept. 26, 2017). The court held that by conditioning approval of the sale upon the posting of a bond, the State was attempting to collect upon the debtor's obligation to pay for the costs of plugging the abandoned wells. Imposition of such a condition, the court found, constituted impermissible discrimination against the debtor and its affiliate, the purchaser of the gas leases, in violation of § 525.

The facts of this case are strikingly similar. The Attorney General's consent is akin to a "license," "permit," or "franchise," within the meaning of § 525, since that consent is necessary for Prime to close the transaction. The Attorney General has conditioned approval of the Prime Sale upon Prime assuming charity care and community benefit obligations similar to the 2015 Conditions that are an obligation of the Debtors. In so doing, the Attorney General is attempting to enforce the charity care and community benefit liabilities imposed by the 2015 Conditions. The 2015 Conditions are liabilities that are dischargeable in bankruptcy, and by attempting to enforce them in connection with the Prime Sale, the Attorney General is impermissibly discriminating against the Debtors in violation of § 525.

The fact that the charity care and community benefit liabilities can be characterized as a regulatory obligation does not change the analysis. As the Supreme Court has explained:

> Under the Bankruptcy Code, "debt" means "liability on a claim," 11 U.S.C. § 101(12), and "claim," in turn, includes any "right to payment," § 101(5)(A). We have said that "[c]laim" has "the broadest available definition," *Johnson v. Home State Bank,* 501 U.S. 78, 83, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991), and have held that the "plain meaning of a 'right to payment' is nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation," *Pennsylvania Dept. of Public Welfare v. Davenport,* 495 U.S. 552, 559, 110 S.Ct. 2126 (1990). See also *Ohio v. Kovacs,* 469 U.S. 274, 105 S.Ct. 705, 83 L.Ed.2d 649 (1985). In short, a debt is a debt, even when the obligation to pay it is also a regulatory condition.

F.C.C. v. NextWave Pers. Commc'ns Inc., 537 U.S. 293, 302–03, 123 S. Ct. 832, 839, 154 L. Ed. 2d 863 (2003).

D. The Debtors May Sell the St. Francis Free and Clear of the Charity Care and Community Benefit Conditions Pursuant to § 363(f)(5)

Under § 363(f)(5), property may be sold free and clear of an interest, if the entity holding the interest "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

An interest "that can be reduced to a specific monetary value" falls within the scope of § 363(f)(5). *In re Trans World Airlines, Inc.*, 322 F.3d 283, 291 (3d Cir. 2003); *see also In re Vista Marketing Grp. Ltd.*, 557 B.R. 630, 635 (Bankr. N.D. Ill. 2016) ("[O]ne would be hard-pressed to present a clearer example of a situation where the interest-holder could be compelled to accept a money satisfaction of its interest under subsection (f)(5) than the calculable monetary obligation asserted by the District in its surcharge bill and disconnection notice.").

The charity care and community benefit conditions require St. Francis to provide specified levels of charity care and community benefit services. Any shortfalls can be satisfied through deficiency payments to tax-exempt entities within St. Francis' service area. The charity care and community benefit obligations can easily be reduced to a specific monetary value. The Debtors may sell the St. Francis free and clear of these obligations pursuant to § 363(f)(5).

E. Section 363(d)(1) Does Not Bar the Sale

As noted, § 363(d)(1) provides that non-profit entities, such as the Debtors, may sell estate assets only if the sale is "in accordance with nonbankruptcy law applicable to the transfer of property by" a non-profit entity.

For the reasons discussed in Section II.B., above, the Debtors are authorized to sell St. Francis, free and clear of the Additional Conditions, under applicable nonbankruptcy law.

Even if the Debtors were not authorized to sell the St. Francis free and clear under applicable nonbankruptcy law, § 363(d)(1) does not limit the Debtors' ability to sell St. Francis free and clear of the Additional Conditions under § 363(f)(4) or (5). **[Note 8]** Basic principles of statutory construction dictate this result. "Statutory construction … is a holistic endeavor." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371, 108 S. Ct. 626, 630, 98 L. Ed. 2d 740 (1988). The Court must look "to the provisions of the whole law, and to its object and policy." *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 94–95, 114 S. Ct. 517, 523, 126 L. Ed. 2d 524 (1993). Absent a "clear intention otherwise," specific provisions addressing an issue apply instead of more generalized provisions covering the same issue. *Morton v. Mancari*, 417 U.S. 535, 550–51, 94 S. Ct. 2474, 2483, 41 L. Ed. 2d 290 (1974). This rule applies "regardless of the priority of enactment" of the provisions. *Id.*

Section 363(f) sets forth specific circumstances under which assets may be sold free and clear. Section 363(f) is not limited by a non-profit debtor's general obligation under § 363(d)(1) to comply with nonbankruptcy law. The general requirement set

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forth in § 363(d)(1) makes no reference to § 363(f), which more specifically delineates the circumstances in which assets may be sold free and clear. Without a "clear intention otherwise," *Morton*, 417 U.S. at 550–51, the general requirement of § 363(d)(1) does not repeal the specifics of free and clear sales under § 363(f), even though § 363(d)(1) was enacted subsequent to § 363(f).

F. Section 541(f) Does Not Bar the Sale

Section 541(f) provides:

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

The Attorney General asserts that § 541(f)'s initial clause, "[n]otwithstanding any other provision of this title," is broad enough to trump § 363(f). According to the Attorney General, § 541(f) requires that the Prime Sale comply with applicable California law. As a result, the Attorney General argues, the Prime Sale can occur only if SGM agrees to accept all of the 2019 Conditions, including the Additional Conditions.

The language of § 541(f) is similar, but not identical to, the language of § 363(d)(1). Section 363(d)(1) requires that non-profit entities transfer property "in accordance with nonbankruptcy law applicable to the transfer of property by" the non-profit entity; § 541(f) requires that such transfers occur "only under the same conditions as would apply if the debtor had not filed a case under this title."

"[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 300, 78 L. Ed. 2d 17 (1983). Therefore, the Court cannot assume that § 541(f) has the same meaning as § 363(f). That is, § 541(f) cannot mean that the Debtors are required to transfer property "in accordance with nonbankruptcy law applicable to the transfer of [such] property," since that is the language used in § 363(d)(1).

There is no legislative history to guide the Court in construing the phrase "under

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the same conditions" in § 541(f). Nor has the Court been able to locate any cases interpreting this section. In the absence of legislative history, phrases are construed in accordance with their "ordinary or natural meaning." *F.D.I.C. v. Meyer*, 510 U.S. 471, 476, 114 S. Ct. 996, 1001, 127 L. Ed. 2d 308 (1994). According to *Roget's 21st Century Thesaurus* (3d ed. 2013), a synonymous phrase for "under the same conditions" is "in these circumstances."

Here, the Debtors have complied with § 541(f)'s mandate. That is, "[n]otwithstanding any other provisions" of the Bankruptcy Code, they have sought to transfer St. Francis in the same manner as the transfer would have occurred under applicable nonbankruptcy law. The Debtors submitted the transfer to the review of the Attorney General, paid for the expert healthcare impact statements required under the statute, and waited for 90 days for the Attorney General to review the transaction. The transfer has been subject to the same conditions that would have applied had the Debtors not sought bankruptcy protection.

Even if the Attorney General were correct that § 541(f) had the same meaning as § 363(d)(1), the Debtors would still be able to sell the St. Francis free and clear of the Additional Conditions, pursuant to § 363(f)(1), (4), and (5). Contrary to the Attorney General's contention, the "notwithstanding" clause does not mean that § 541(f) trumps § 363(f). The Ninth Circuit has held:

> In examining specific statutes, we have not, however, always accorded universal effect to the "notwithstanding" language, standing alone. *See Or. Natural Res. Council v. Thomas,* 92 F.3d 792, 796 (9th Cir.1996) ("We have repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally." (citing *E.P. Paup Co. v. Dir., Office of Workers Comp. Programs,* 999 F.2d 1341, 1348 (9th Cir.1993); *Kee Leasing Co. v. McGahan (In re The Glacier Bay*), 944 F.2d 577, 582 (9th Cir.1991); *Golden Nugget, Inc. v. Am. Stock Exch., Inc.,* 828 F.2d 586, 588–89 (9th Cir.1987) (per curium))). Instead, we have determined the reach of each such "notwithstanding" clause by taking into account the whole of the statutory context in which it appears.

United States v. Novak, 476 F.3d 1041, 1046 (9th Cir. 2007).

Relying upon the "common-sense principle of statutory construction that sections of a statute generally should be read to give effect, if possible, to every clause," the Ninth Circuit has held that a "notwithstanding" provision should not be given its broadest possible interpretation if doing so would render other statutory provisions ineffectual. *Oregon Nat. Res. Council v. Thomas*, 92 F.3d 792, 797 (9th Cir. 1996).

According the "notwithstanding" clause the broad construction advocated by the Attorney General would render § 363(f) of the Bankruptcy Code ineffectual with respect to non-profit debtors. The elimination of § 363(f) from a non-profit debtor's toolkit would meaningfully circumscribe the ability of non-profit debtors to reorganize their debts in a Chapter 11 proceeding. Sales under § 363 are the most efficient way for a debtor to obtain the highest price for its assets, which in turn yields the greatest recovery to creditors. Barring non-profit debtors from taking advantage of this valuable tool would not be in the public interest.

Section 541(f) was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1221(e) ("BAPCPA"). BAPCPA made no changes to § 363(f). The Court cannot find that Congress intended § 541(f) to trump § 363(f) with respect to non-profit debtors.

III. Conclusion

Based upon the foregoing, the Court finds that the Debtors may sell St. Francis to Prime, free and clear of the Additional Conditions. The sale may proceed under applicable nonbankruptcy law pursuant to § 363(f)(1) because (1) the Additional Conditions qualify as successor liability that may not be imposed against SGM under California law and because (2) the Attorney General abused his discretion in attempting to impose the Additional Conditions, which therefore must be set aside. A bona dispute as to the Attorney General's authority to impose the Additional Conditions exists under § 363(f)(4), because the Debtors (1) have shown that the Additional Conditions are not authorized under California law and that (2) the attempted imposition of the charity care and community benefit conditions violates § 525. Pursuant to §363(f)(5), the sale is free and clear of the charity care and community benefit obligations, which can be reduced to a monetary valuation.

Note 1

For a description of the Santa Clara Sale, see *In re Verity Health Sys. of California, Inc.*, 598 B.R. 283 (Bankr. C.D. Cal. 2018) ("*Verity I*").

Note 2

The Approved Conditions are set forth in Exhibit 5.8(c) to the APA.

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Note 3

See Verity I, 598 B.R. at 293 ("The Conditions [imposed by the Attorney General] are an 'interest in property' within the meaning of § 363(f). The Conditions provide that any owner of the Hospitals must furnish specified levels of emergency services, intensive care services, cardiac services, and various other services. The required service levels were derived based upon the historical experience of the prior operator. As such, the Conditions are monetary obligations arising from the ownership of property.").

Note 4

See generally Verity I.

Note 5

As nonprofit public benefit corporations, the Debtors do not have stockholders.

Note 6

This provision of BAPCPA does not appear in the Bankruptcy Code itself.

Note 7

On August 7, 2020, the Court enter an order and corresponding memorandum of decision striking from the record an opposition to the Motion filed by Prospect Medical ("Prospect"). *See* Doc. Nos. 5399 (the "Prospect Memorandum") and 5401 (the "Prospect Order"). Notwithstanding the fact that Prospect's opposition has been stricken, the Court finds it appropriate to briefly address Prospect's assertion that it is willing to purchase St. Francis subject to all of the Additional Conditions at a higher price than that offered by Prime.

At this late stage, Prospect's offer cannot be considered a serious alternative to the Prime Sale. First, the offer is contingent upon a ten-day due diligence period. Therefore, there can be no assurance that Prospect will proceed with its offer. Second, the Court has not been provided sufficient information regarding the offer to ascertain whether it really is superior to the Prime Sale. Third, even if the offer is superior to the Prime Sale and the contingency risk is disregarded, a sale to Prospect would require another 90-day review period by the Attorney General. The Debtors lack sufficient funds to continue operating St. Francis during the time it would take to complete another sale.

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Note 8

Under § 363(f)(4), the Debtors are authorized to sell St. Francis free and clear of all of the Additional Conditions. *See* Section II.C., above. Under § 363(f)(5), the Debtors are authorized to sell St. Francis free and clear of the charity care and community benefit obligations. *See* Section II.D., above.

Party Information

Debtor(s):

Verity Health System of California, Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth
Kerry L Duffy

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2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#10.20 Hearing re [5424] Seventh Omnibus Motion To Reject, Pursuant To 11 U.S.C. § 365(A), Certain Payor, Administrative And Risk-Sharing Agreements

Docket 0

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

Subject to any opposition which may be presented at the hearing, the Court is prepared to **GRANT** the Emergency Motion.

Pleadings Filed and Reviewed:
1) Debtors' Emergency Motion and Seventh Omnibus Motion to Reject, Pursuant to 11 U.S.C. § 365(a), Certain Executory Contracts and Unexpired Leases [Doc. No. 5424] (the "Emergency Motion")
2) Order Setting Hearing on Seventh Omnibus Motion to Reject Payor, Administrative, and Risk-Sharing Agreements [Doc. No. 5441]
3) Opposition may be presented at the hearing

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health System of California, Inc. ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' Chapter 11 cases are being jointly administered.

The Debtors move, on an emergency basis, for authorization to reject agreements (the "Agreements") between St. Francis Medical Center ("SFMC") and various health benefit plan payors and medical groups (collectively, the "Payors") pursuant to § 365(a), with rejection to take effect as of the closing date (the "Closing Date") of the sale of SFMC to Prime (the "Prime Sale"). The Prime Sale is projected to close on

August 13, 2020. Debtors state that rejection is necessary to avoid the incurrence of administrative expense liability under the Agreements following the Closing Date.

II. Findings and Conclusions

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract or unexpired lease:

> In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." …
>
> Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. *See Navellier v. Sletten,* 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Castetter,* 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang,* 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

The Court finds that the Debtors have shown sufficient cause to reject the Agreements. The Debtors have demonstrated that the Agreements are no longer necessary in view of the sale of SFMC to Prime. Rejection of the Agreements shall be effective as of the Closing Date of the Prime Sale.

The deadline for counterparties to the Agreements to file a proof of claim arising from the rejection of the applicable Agreement, pursuant to Bankruptcy Rule 3002(c)(4), shall be **September 28, 2020** (the "Rule 3002(c)(4) Claims Bar Date"). Debtors shall provide notice of the Rule 3002(c)(4) Claims Bar Date so that it is actually received by counterparties no later than **August 19, 2020**. Debtors shall file a proof of

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CONT... **Verity Health System of California, Inc.** **Chapter 11**

service of such notice by no later than **August 19, 2020**.

III. Conclusion

Based upon the foregoing, the Motion is **GRANTED**. Within seven days of the hearing, the Debtors shall submit an order incorporating this tentative ruling by reference.

Party Information

Debtor(s):

Verity Health System of California,	Represented By Samuel R Maizel John A Moe II Tania M Moyron Claude D Montgomery Sam J Alberts Shirley Cho Patrick Maxcy Steven J Kahn Nicholas A Koffroth Kerry L Duffy

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2:15-16851 Michael Thomas Grumbine **Chapter 7**

#11.00 HearingRE: [89] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Chapter 7 Trustee's Motion for Order: (1) Authorizing Sale of Esate's Right, Titel and Interest in Certain Personal Property; (2) Approving Overbid Procedures; and (3) Waiving Rule 6004(h) Stay; Declaration in Support (Pagay, Carmela)

Docket 89

Tentative Ruling:

8/11/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived. The Trustee shall direct potential overbidders, if any, to contact the above-referenced number prior to the hearing.

For the reasons set forth below, the Sale Motion is GRANTED. The Court will conduct the sale auction in accordance with the procedures set forth below.

Key Sale Terms:

1) Proposed purchaser: Foot Technologies, Inc. ("FTI")
2) Property for sale: Interest in royalty payments, as well as any assets, patents, and/or trademarks held by Belize Investment Services, Inc. ("BIS")
3) Purchase price: $75,000
4) Overbids: The initial overbid shall be $5,000. Subsequent overbids shall be in increments of $1,000.

Pleadings Filed and Reviewed:

1) Chapter 7 Trustee's Motion for Order: (1) Authorizing Sale of Estate's Right, Title, and Interest in Certain Personal Property; (2) Approving Overbid Procedure; and (3) Waiving Rule 6004(h) Stay [Doc. No. 89] (the "Motion")
   a) Notice of [Motion] [Doc. No. 90]
   b) Notice of Sale of Estate Property [Doc. No. 91]
2) As of the preparation of this tentative ruling, there is no opposition to the Sale

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CONT... **Michael Thomas Grumbine** **Chapter 7**

Motion on file

I. Facts and Summary of Pleadings

Michael Thomas Grumbine (the "Debtor") commenced a voluntary chapter 7 petition on April 29, 2015 (the "Petition Date"). Heide Kurtz was appointed the chapter 7 trustee (the "Trustee"). Prior to the Petition Date, the Debtor became involved in a state court action titled *Diane E. DePould, et al. v. Michael Grumbine, et al.*, Case No. VC062662 (the "State Court Action"), which was pending before the Los Angeles Superior Court (the "State Court"). The State Court Action alleged that the Debtor had improperly transferred an interest in certain royalty payments owed by FTI to Belize Investment Services, Inc. ("BIS"), an entity controlled by the Debtor. On or about April 16, 2015, the State Court entered a statement of decision, which precluded BIS or the Debtor from receiving any royalties and instead directed the disbursement of payments to the Trustee. The Trustee subsequently received an offer from FTI to purchase the estate's interest in the royalty payments, as well as any assets held by BIS (collectively, the "Assets") for $75,000, subject to overbids in advance of the upcoming auction. The terms of FTI's offer have been incorporated into a purchase agreement executed by the parties on or about July 20, 2020 (the "Agreement"). *See* Declaration of Heide Kurtz ("Kurtz Decl."), Ex. 1 (copy of the Agreement).

The Trustee requests approval of the Motion and the Agreement pursuant to § 363(b). The Trustee asserts that the sale of the Assets is reasonable under the circumstances, supported by sound business judgment, and accounting for costs of sale, the proposed consideration is fair and reasonable. The Trustee argues that the sale will generate a significant increase to the already sizeable pool of funds the estate holds in the sum of $109,700.32. **[Note 1]**. In addition to paying off all administrative expenses, the Trustee anticipates satisfying approximately 70% of allowed unsecured claims. The Trustee posits that delaying approval of the Motion is not recommended as future royalty payments are expected to decrease due to financial exigencies caused by the COVID-19 pandemic. *See* Kurtz Decl., ¶ 6. The Trustee is not aware of any liens or encumbrances against the Assets. The sale is subject to overbids. Finally, the Trustee requests waiver of the 14-day waiting period imposed by Fed. R. Bank. P. 6004(h).

As of the preparation of this tentative ruling, no opposition to the Motion is on file.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19-20.

The Trustee has demonstrated sufficient business justification for the sale, which will generate a considerable pool of funds, provide the estate with an opportunity to maximize recovery through the overbid procedures, and allow the Trustee to pay all administrative expenses, priority claims, and about 70% of allowed unsecured claims. Further, the sale is in accordance with the Trustee's statutory obligation to liquidate the estate's assets.

Auction Procedures

As a result of the COVID-19 pandemic, the courtroom is unavailable for in-court appearances. All potential overbidders must appear by telephone only. In the event that any qualified overbidder makes a telephonic appearance, the Court will conduct an auction in accordance with the procedures set forth in the Motion. The initial overbid shall be $5,000 above the purchase price with subsequent overbids to be in increments of $1,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by clearly stating their bid. Additional overbidding procedures proposed by the Trustee are approved as set forth in the Motion.

III. Conclusion

Based upon the foregoing, the Sale Motion is GRANTED. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take immediate effect upon entry.

The Trustee shall submit a conforming order, incorporating this tentative ruling by

10:00 AM
CONT... Michael Thomas Grumbine **Chapter 7**

reference, within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Carlos Nevarez at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The total funds held by the estate are current as of July 13, 2020.

Party Information

Debtor(s):

Michael Thomas Grumbine	Represented By Michael E Clark

Trustee(s):

Heide Kurtz (TR)	Represented By Carmela Pagay

Wednesday, August 12, 2020 **Hearing Room 1568**

10:00 AM

2:13-27702 Morad Javedanfar **Chapter 7**

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#12.00 Hearing
RE: [366] Application for Attorneys' Fees on Appeal Pursuant to Court's Memorandum of Decision. (Hewlett, Douglas)

Docket 366

***** VACATED *** REASON: CONTINUED 8-19-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar	Represented By Andre A Khansari

Defendant(s):

Morad Neman	Represented By Yuriko M Shikai Timothy L Neufeld Jennifer B MikoLevine
MBN Real Estate Investments, LLC	Represented By Stephen F Biegenzahn Jennifer B MikoLevine Paul S Marks

Joint Debtor(s):

Yaffa Javedanfar	Represented By Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC	Represented By Douglas S Hewlett

10:00 AM

CONT... **Morad Javedanfar** **Chapter 7**

Trustee(s):

Timothy Yoo (TR) Represented By
Anthony A Friedman