Docket #3093 Date Filed: 9/18/2019

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re:

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

Debtors and Debtors In Possession.

Affects:

☑ All Debtors
☐ Verity Health System of California, Inc.
☐ O'Connor Hospital
☐ Saint Louise Regional Hospital
☐ St. Francis Medical Center
☐ St. Vincent Medical Center
☐ Seton Medical Center
☐ O'Connor Hospital Foundation
☐ Saint Louise Regional Hospital Foundation
☐ St. Francis Medical Center of Lynwood Foundation
☐ St. Vincent Foundation
☐ St. Vincent Dialysis Center, Inc.
☐ Seton Medical Center Foundation
☐ Verity Business Services
☐ Verity Medical Foundation
☐ Verity Holdings, LLC
☐ De Paul Ventures, LLC
☐ De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Ernest M. Robles

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' REPLY TO CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S SUPPLEMENTAL OBJECTION TO SALE [DKT. 3043]

Hearing:
Date: September 25, 2019
Time: 10:00 a.m.
Location: Courtroom 1568
255 E. Temple St.
Los Angeles, CA 90012

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The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee") appointed in connection with the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors in possession (the "Debtors"), hereby submits this response (the "Committee Response") to the *Creditor California Department of Health Care Services' Supplemental Objection to (1) Debtors' Motion for the Entry of an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2) Notice to Counterparties to Executory Contracts and Unexpired Leases of Debtors* (the "Supplemental Objection") [Docket No. 3043], filed by the California Department of Health Care Services (the "DHCS") in further opposition to the *Debtors' Notice of Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse 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 Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof (Filed by Debtor Verity Health System of California, Inc.)* [Docket No. 1279] (the "Sale Motion"),[1] and in support thereof represents as follows:

PRELIMINARY STATEMENT

1. In its Objection, the DHCS argues that the Sale Motion should not be granted unless the Debtors (i) agree that the Medi-Cal Provider Agreements between the DHCS and the Debtors selling assets in connection with the Sale (the "Sellers") will be treated as executory contracts; and (ii) make provision for the payment of more than $52.2 million in cure costs purportedly owed by

[1] Any capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion, the related Asset Purchase Agreement (the "APA"), or the Supplemental Objection.

the Sellers[2] under their respective Medi-Cal Provider Agreements (the "Seller Provider Agreements") (Obj. at 12:2-17:1; 22:17-26.) The DHCS's arguments are without merit for the following reasons.

2. *First,* the Seller Provider Agreements are not contracts, and even if deemed to be contracts, they are not executory in nature, so no cure costs are owed or need be paid at closing. In contending to the contrary, the DHCS takes a position contrary to binding Ninth Circuit precedent as to whether the Seller Provider Agreements are executory contracts. On the basis of this precedent alone, the Court should find that the Seller Provider Agreements are not contracts that give rise to enforceable contractual obligations between the DHCS and the Sellers, or, alternatively, even if they are contracts, they are not executory contracts that are required to be assumed and assigned under section 365 of the Bankruptcy Code, as to which cure costs must be paid prior to assumption.

3. *Second,* the Court should instead conclude that the Seller Provider Agreements are governmental licenses that are assets of the Sellers' respective estates that can be sold "free and clear" of all "interests" pursuant to section 363(f) of the Bankruptcy Code. Most relevantly for current purposes, a sale pursuant to section 363(f) of the Bankruptcy Code—and the cleansing of existing obligations it provides—will result in the sale of the Seller Provider Agreements being consummated without any need to pay, or make provision for, the cure costs that the DHCS incorrectly contends will be due in connection with closing of the Sale.

4. *Third*, even if the Seller Provider Agreements are deemed to be executory contracts, the Quality Assurance Fees (the "QAF Fees")[3] that the DHCS contends are owed by the Sellers are not

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[2] The Committee's financial advisor has not yet been able to reconcile the $52.3 million in overall cure costs (including both Medi-Cal reimbursement and QAF Fee amounts) that the DHCS alleges is outstanding with amounts derived from publicly available and Debtor-provided sources, and, thus, the Committee reserves all rights as to the validity of this number.

[3] The QAF Fees are, according to the DHCS and the relevant California statutes, "charge[s] imposed by the [DHCS] on non-exempt hospitals to finance the non-federal share of specified Medi-Cal costs . . . in order to make supplemental payments to hospitals, including private hospitals (such as Debtors), and to help pay for health care coverage for low-income children." (Obj. at 4:3-9, 6:4-6.); *see* Cal. Welf. & Inst. Code § 14169.50, *et seq*. (West 2018) (the "QAF Statute"). The quarterly QAF Fees imposed upon nonexempt hospitals by the QAF Statute have been collected by the DHCS as part of a program (the "QAF Program") in effect since 2009, and are used to supplement Medi-Cal expenditures and sustain, by means of periodic supplemental payments,

obligations arising under the Seller Provider Agreements, and, thus, no cure payments are required to be made with respect to such QAF Fees in connection with consummation of the Sale. Section 365(b)(1)(A) of the Bankruptcy Code only requires a debtor to cure a "default in an executory contract," which is not equivalent to payment of all claims of a creditor, and does not encompass the payment of obligations arising by statute or under different contracts.

5. For all the foregoing reasons, the Objection should be overruled and the Sale Motion granted without any of the qualifications proposed by the DHCS.

POINT I

SELLER PROVIDER AGREEMENTS ARE NOT EXECUTORY CONTRACTS, SO ASSUMPTION AND ASSIGNMENT ARE NOT NECESSARY, AND NO CURE COSTS ARE DUE AND PAYABLE

6. The Seller Provider Agreements are, in the first instance, not contracts, and even if deemed to be contracts, they are not executory in nature, so no cure costs are owed or need be paid at closing. The DHCS' contentions to the contrary are without merit.

7. The Ninth Circuit has expressly held that Medicare provider agreements, which are, in all material respects, akin to the Seller Provider Agreements, do not create any "contract right[s]" or a contractual relationship between the parties:

> We have, on occasion, stated that providers and others have contracts with the government in this area, but our decisions have turned on the regulatory regime rather than on contract principles. … As the Eleventh Circuit Court of Appeals held when hospitals complained of legislative impairment of their contract rights in this area because they had agreements with the Secretary: "Upon joining the Medicare program, however, the hospitals received ***a statutory entitlement, not a contract right.***"

PAMC, Ltd. v. Sebelius, 747 F.3d 1214, 1221 (9th Cir. 2014) (*quoting Mem'l Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983) (emphasis added)).

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the viability of hospitals rendering more than their proportionate share of medical service to low-income patients. *Id.*

8. This is the case because the Seller Provider Agreements are creations of statute, which define benefits afforded to relevant parties, but do not create any rights in contract. *Hollander v. Rezenoff*, 787 F.2d 834, 839 (2d Cir. 1986) (characterizing the Medicare relationship with providers as a "statutory business relationship"); *U.S. ex rel. Acad. Health Ctr., Inc. v. Hyperion Foundation, Inc.*, 2014 U.S. Dist. LEXIS 93185 (S.D. Miss., July 9, 2014) (holding that Medicare provider agreements are not contracts); *U.S. ex rel. Roberts v. Aging Care Home Health, Inc.,* 474 F. Supp. 2d 810, 820 (W.D. La. 2007) ("Medicare Provider Agreements create statutory, not contractual, rights."); *Maximum Care Home Health Agency v. HCFA*, No. 3-97-CV- 1451-R, 1998 WL 901642, at *5 (N.D. Tex. Apr. 14, 1998) ("[A] Medicare service provider agreement is not a contact in the traditional sense. It is a statutory entitlement created by the Medicare Act.").

9. If provider agreements substantially similar to the Seller Provider Agreements are not contracts outside of bankruptcy, they cannot be executory contracts in the bankruptcy context. Because the Bankruptcy Code does not define what is a contract for its purposes, *In re Frontier Props., Inc*., 979 F.2d 1358 (9th Cir. 1992) ("The [bankruptcy] Code does not define 'executory contract'"), courts look to applicable non-bankruptcy law to determine what constitutes a contract for bankruptcy purposes. *See, e.g., Butner v. United States*, 440 U.S. 48, 54 (1979) (noting that Congress has "generally left the determination of property rights in the assets of a bankrupt's estate" to applicable non-bankruptcy law). Here, the applicable law is federal law and it is best interpreted in accordance with the views of the United States, which, in comparable non-bankruptcy contexts construing parallel federal law programs, has maintained that Medicare provider agreements and similar entitlement program documents simply memorialize statutory entitlements and do not independently have any of the earmarks of a contract.

10. While there are a number of decisions (on which the DHCS relies) that refer to Seller Provider Agreement-like agreements as executory contracts, in most of these cases, the issue

was not disputed by the debtor or decided by the bankruptcy court.[4] Bankruptcy courts that have actually addressed this issue in a fully litigated context have concluded that (i) the relevant provider agreements were not contracts; (ii) such agreements need not be assumed or assigned; and (iii) such agreements were estate assets that could be sold under section 363 of the Bankruptcy Code, without regard to any cure costs that might otherwise be due.

11. In *In re BDK Health Management, Inc*., 1998 Bankr. LEXIS 2031 (Bankr. M.D. Fa., Nov. 16, 1998), for example—which is directly on point, well-reasoned, and persuasive—the court addressed a motion to sell, pursuant to section 363(f), virtually all of the debtor's assets of various home healthcare agencies, including its Medicare Provider Agreements, free of all liens, claims, and encumbrances. The United States objected to the sale by asserting, among other things, that (i) provider agreements were executory contracts that had to be assumed and assigned; and (ii) cure of any defaults prior to assumption included repayment of any alleged prepetition and postpetition overpayments.

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[4] In *United States v. Consumer Health Services*, 108 F.3d 390 (D.C. Cir. 1997), for example, the appellate court did not address the issue of whether the provider agreement was a contract, which the lower court had characterized as an "executory contract." The Third Circuit decision in *University Medical Center v. Sullivan (In re University Medical Center)*, 973 F.2d 1065 (3d Cir. 1992), ignored contrary binding precedent, and the issue was not litigated by the parties. *Cf. Germantown Hosp. & Med. Ctr. v. Heckler*, 590 F. Supp. 24, 30–31 (E.D. Pa. 1983) ("There is no contractual requirement requiring [CMS] to provide Medicare reimbursement. Rather, upon joining the Medicare program, providers gain a statutory entitlement to reimbursement."), *aff'd*, 738 F.2d 631 (3d Cir. 1984). In *In re Heffernan Memorial Hospital District*, 192 B.R. 228, 231 n.4 (Bankr. S.D. Cal. 1996), the issue was not litigated and the debtor appeared to concede that the provider agreement was an executory contract. In *In re Vitalsigns Homecare, Inc*., 396 B.R. 232 (Bankr. D. Mass. 2008), the court decided that the United States had a right of recoupment based on the Medicare relationship, but did not hold that the provider agreement was an executory contract. Rather, it stated that "the provider number and the provider agreement are part and parcel of a complicated statutory scheme." *Id*. Along similar lines, in *In re St. Johns Home Health Agency, Inc*., 173 B.R. 238 (Bankr. S.D. Fla. 1994), the debtor conceded that the provider agreement was an executory contract. Also, the bankruptcy court did not address binding precedent from the Eleventh Circuit rejecting an argument that entering into a provider agreement gave the provider "a vested contractual right to Medicare reimbursement." *Mem'l Hosp. v. Heckler*, 706 F.2d 1130, 1136 (11th Cir. 1983) ("Upon joining the Medicare program, however, the hospitals received a statutory entitlement, not a contractual right. Although the hospitals entered into an "agreement" with the Secretary that they would abide by the rules of the Medicare program, that agreement did not obligate the Secretary to provide reimbursement for any particular expenses such as Hill-Burton costs."). Finally, this Court in *In re Gardens Regional Hospital & Medical Center, Inc.,* 569 B.R. 788, 799 (Bankr. C.D. Cal. 2017), concluded that recoupment by the DHCS was warranted "regardless of whether the Provider Agreement is considered a license or contract."

12. The court rejected the United States' argument and approved the sale, noting that outside of bankruptcy the United States expressly disclaimed that the Provider Agreements established contractual relationships between the government and a healthcare provider. The court also noted that the Medicare Provider Agreements imposed no obligations and conferred no benefits on the debtor or the government other than establishing that the debtor was entitled to operate and be reimbursed in accordance with the applicable Medicare statutes and regulations.

13. Also in the Eleventh Circuit, the *Heckler* court found that "Medicare providers, upon joining the Medicare program receive[] a statutory entitlement, not a contractual right. Although the hospitals entered into an 'agreement' with the Secretary that they would abide by the rules of the Medicare program, that agreement did not obligate the Secretary to provide reimbursement for any particular expenses." *Heckler*, 706 F. 2d at 1136; *see also Harper-Grace Hospitals v. Schweiker*, 708 F.2d 199, 201 n.1 (6th Cir. 1983) ("[the health care provider] has not shown that the Medicare program established a contractual relationship between the hospital and federal government")*; Greater Dallas Homecare Alliance v. United States*, 10 F. Supp. 2d. 638, 647 (N.D. Tex 1998) ("Plaintiffs argue that the Medicare participation agreements between [HCFA] and the [health care providers] are essentially contracts. The court disagrees and finds that the participation agreements are not contracts, for the right to receive payments under the Medicare Act is a manifestation of government policy and, as such, is a statutory rather than a contractual right"); *Homecare Ass'n of America Inc. v. United States*, 1998 U.S. Dist. Lexis 20515 (W.D. Okla. Aug. 19, 1998) (holding that no contractual obligation existed between government and provider of Medicare services).[5]

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[5] These decisions are also consistent with the general contact law principles set out in the Restatement (Second) of Contracts. *See, e.g., Pac. Gas & Elec. Co. v. United States*, 73 Fed. Cl. 333 (2006) (applying Restatement (Second) of Contracts to resolve government contract case); *Nat'l By-Products, Inc. v. United States*, 405 F.2d 1256, 1263 (Ct. Cl. 1969) (same). Circumstances where the relevant parties receive no consideration from their counterparties because the purported contract merely requires both parties to adhere to existing statutes and regulations, and, therefore, do not impose legal obligations other than those both parties already owe do not give rise to enforceable contractual obligations. *See Restatement (Second) of Contracts* § 73 ("Performance of a legal duty owed to a promisor which is neither doubtful nor the subject of an honest dispute is not consideration."); *see, e.g., United States v. Travelers Indem. Co*., 802 F.2d 1164, 1167 (9th Cir. 1986) ("[P]erformance of a pre-

14. This Court should reach similar conclusions here about the Seller Provider Agreements and definitively determine that the Seller Provider Agreements are neither contracts nor executory in nature.

POINT II

SELLER PROVIDER AGREEMENTS ARE GOVERNMENT LICENSES THAT CAN BE SOLD FREE AND CLEAR OF INTERESTS PURSUANT TO SECTION 363(f)

15. The Court should instead conclude that the Seller Provider Agreements are governmental licenses (or comparable bundles of statutory entitlements) that can be sold "free and clear" of all "interests" pursuant to section 363(f) of the Bankruptcy Code.

16. The Seller Provider Agreements create a "statutory entitlement" to bill the Medi-Cal program and, thus, effectively make them akin to licenses to participate in the Medi-Cal program. Most courts have held that a license issued by a government agency is property of the bankruptcy estate. *See, e.g., In re Tak Communic'ns*, 985 F.2d 916 (7th Cir. 1993); *In re Fugazy Express, Inc*., 124 B.R. 426 (S.D.N.Y. 1991); *In re Smith*, 94 B.R. 220 (Bankr. M.D. Ga. 1988).

17. Such a conclusion is consistent with the general rule that all of a debtor's property, including all legal and equitable interests and entitlements becomes property of the bankruptcy estate. *See* 1 U.S.C § 541; *see, e.g., Taylor v. Freeland & Kronz*, 503 U.S. 638, 642 (1992); *United States v. Whiting Pools, Inc*., 462 U.S. 198, 203-05 (1983). It is also consistent with the notion

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existing legal duty is not sufficient consideration."); *Pressman v. United States*, 33 Fed. Cl. 438, 444 (1995) ("A promise by a government employee to comply with the law does not transform statutory or regulatory obligations to contractual ones" and therefore cannot provide consideration), *aff'd*, 78 F.3d 604 (2006). Here, because there is no consideration to the parties to the Seller Provider Agreements in that the Provider Agreements (a) merely inform the provider to follow applicable rules and statutes, which they had a pre-existing legal duty to do; (b) provide no benefits to the DHCS; and (c) impose no duties on the DHCS other than to follow existing statutes and regulations, the Seller Provider Agreements are not supported by consideration, and are, therefore, not contracts. *See generally* Samuel R. Maizel and Jody A. Bedenbaugh, *The Medicare Provider Agreement: Is It a Contract or Not? And Why Does Anyone Care?* 71 Bus. Law. 1207 (Fall 2016); Sarah Robinson Borders & Rebecca Cole Moore, *Purchasing Medicare Provider Agreements in Bankruptcy: The Case Against Successor Liability for Prepetition Overpayments*, 24 Cal. Bankr. J. 253 (1998) (both discussing reasons why Medicare Provider Agreements are not contracts).

that licenses can be sold "free and clear" under § 363. *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380 (2d Cir. 1997) (rights to a trademark can be sold in a 363 sale "free and clear" of all prior interests of licensees and sublicensees); *ITOFCA, Inc. v. MegTrans Logistics, Inc*., 322 F.3d 928 (7th Cir. 2003) (a nonexclusive software license held by the copyright owner's bankrupt subsidiary was sold in a 363 sale "free and clear" of all encumbrances). This applies even if the Court agrees that the transfer requires government approval. *See, e.g., In re Barnes*, 276 F.3d 927, 928 (7th Cir. 2002) ("The sale of many goods require government approval and of course property can be taken away from a person for various reasons, for example because it has become a public or private nuisance. It is no surprise, therefore, that the few cases to address the issue hold that a liquor license, provided it is saleable, is indeed property within the meaning of § 541 of the Bankruptcy Code.").

18. If the Sellers sell the Seller Provider Agreement pursuant to section 363(f) of the Bankruptcy Code, such sale will be made "free and clear of *any interest* in such property," including any obligations that may "arise from the property being sold." 11 U.S.C. § 363(f) (emphasis added); s*ee, e.g., Precision Indus., Inc. v. Qualitech Steel SBQ, LLC,* 327 F.3d 537 (7th Cir. 2003) ("As commentators have pointed out, the Supreme Court elsewhere has observed that the term 'interest' is a broad term no doubt selected by Congress to avoid 'rigid and technical definitions drawn from other areas of the law.'" (quoting *Russello v. United States,* 464 U.S. 16, 21 (1983)); *Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 258 (3d Cir. 2000) (holding that debtors "could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute"); *Myers v. United States,* 297 B.R. 774, 784 (S.D. Cal. 2003) (holding "the Bankruptcy Code preempts California [successor liability] state law" with respect to an environmental tort).

19. More relevantly for current purposes, a sale pursuant to section 363(f) of the Bankruptcy Code—and the cleansing of existing obligations it provides—will result in the sale of the Seller Provider Agreements being consummated without any need to pay, or make provision for, the

cure costs that would be required if the Seller Provider Agreements were assumed and assigned pursuant to section 365 of the Bankruptcy Code.

POINT III

EVEN IF SELLER PROVIDER AGREEMENTS ARE EXECUTORY CONTRACTS, QAF FEES ARE NOT OBLIGATIONS ARISING THEREUNDER AND NO CURE PAYMENTS ARE REQUIRED TO BE MADE WITH RESPECT TO SUCH QAF FEES

20. Even if the Seller Provider Agreements were deemed to be executory contracts, the QAF Fees are not obligations arising thereunder and, thus, no cure payments are required to be made with respect with respect to the more than $27.3 million of QAF Fees that the DHCS contends it is owed by the Debtors in connection with consummation of the Sale.[6]

21. Section 365(b)(1)(A) of the Bankruptcy Code only requires a debtor to cure a "default in an executory contract," which is not at all the same as paying all claims of a creditor. The statutory requirement that a chapter 11 debtor cure any existing defaults as a condition to assuming an executory contract is intended to "insure that a contracting party is made whole before a court can force the party to continue performing with a bankrupt debtor." *In re Superior Toy & Manufacturing Co., Inc*., 78 F.3d 1169, 1174 (7th Cir. 1996). Thus, it is well-established that a nondebtor "party to an executory contract must be paid all amounts due him *under the contract* before the contract may be assumed." *Id.*

22. Here, under the separate statutory scheme established with respect to the QAF Program, the Sellers would owe the QAF Fees without regard to whether or not they were parties to the Seller Provider Agreements. The DHCS' argument ignores entirely the fact that to be a participant in the QAF Program a hospital need not be a Medi-Cal provider; it need only be (i) a "private hospital" licensed under California Health and Safety Code § 1250(a) (that is, is a "general acute care hospital");

[6] The Committee's financial advisor has not yet been able to reconcile the $27.3 million in QAF Fees that the DHCS alleges is outstanding with amounts derived from publicly available and Debtor-provided sources, and, thus, the Committee reserves all rights as to the validity of this number.

(ii) not exempt from paying QAF Fees (such as a "rural hospital"); and (iii) obligated to pay the QAF Fees due under the QAF Statute even though it might not be eligible to receive "supplemental payments" under the QAF Statute.

23. In other words—as the DHCS itself concedes—the obligation to pay the QAF Fees is based on licensure and not on Medi-Cal program participation. (Supp. Obj. at 6:17-18) (the QAF Statute "requires non-exempt hospitals to pay a quarterly [QAF Fee], which is assessed *regardless of whether a hospital participates in the Medi-Cal program*") (emphasis added).) The relevant California statute imposes the fee "on each general acute care hospital that is not an exempt facility." "General acute care hospital" is defined in California Welfare and Institutions Code § 14169.51(q) to be "any hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code." This would include any licensed acute care hospital regardless of whether it participated in the Medi-Cal program and was a party to a Medi-Cal provider agreement.

24. Thus, the QAF Fees allegedly owed by the Sellers to the State are not due under the Seller Provider Agreements (because hospitals with licenses but without a provider agreement must still pay the fees), and, even if these agreements were required to be assumed and assigned to the Purchaser, no "cure" costs, within the meaning of section 365(b)(1)(A), would be payable in connection with such assumption.

CONCLUSION

25. For all the foregoing reasons, the Supplemental Objection should be overruled and the Sale Motion granted without any of the qualifications proposed by the DHCS.

DATED: September 18, 2019

MILBANK LLP

/s/ Mark Shinderman
GREGORY A. BRAY
MARK SHINDERMAN
JAMES C. BEHRENS

Counsel for the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

2029 Century Park E, 33rd Floor, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): ***OFFICIAL COMMITTEE OF UNSECURED CREDITORS' REPLY TO CREDITOR CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S SUPPLEMENTAL OBJECTION TO SALE*** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) September 18, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) September 18, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) September 18, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

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

September 18, 2019	Ricky Windom	/s/ Ricky Windom
Date	*Printed Name*	*Signature*

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(Via NEF)

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