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*[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103]*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 **CGC-24-615801**

14 **THE PEOPLE OF THE STATE OF**
15 **CALIFORNIA, EX REL. ROB BONTA,**
16 **ATTORNEY GENERAL OF THE STATE**
OF CALIFORNIA,

17 Plaintiff,

18 v.

19 **THE REGENTS OF THE UNIVERSITY**
20 **OF CALIFORNIA,**

21 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(CORP. CODE, § 5920, 15 U.S.C. § 18)

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1 The People of the State of California, by and through Rob Bonta, Attorney General of the
2 State of California, allege as follows:

3 **INTRODUCTION**

4 1. CommonSpirit Health, Dignity Health, Saint Francis Memorial Hospital, Dignity
5 Community Care, and Dignity Health Medical Foundation (collectively, Dignity) seek to transfer
6 control of St. Mary’s Medical Center and Saint Francis Memorial Hospital, two general acute
7 care hospitals located in San Francisco, as well as associated clinics and other assets to The
8 Regents of the University of California (The Regents)/UCSF Health (the Proposed Transaction).

9 2. Pursuant to Corporations Code section 5920 et seq., the Attorney General has
10 primary responsibility to review transactions and agreements by non-profit corporations
11 concerning the sale or changes in control of general acute care hospitals and other health
12 facilities. The statute requires the Attorney General’s review of these transactions to take into
13 consideration a set number of factors under section 5920.

14 3. At the conclusion of the review, the Attorney General has discretion to consent to,
15 give conditional consent to, or not consent to the transaction. In making that determination, the
16 Attorney General “shall consider any factors that the Attorney General deems relevant,” including
17 but not limited to ten factors enumerated in the relevant statutes such as whether the transaction is
18 in the public interest or may impact the availability or accessibility of healthcare services. (Corp.
19 Code, § 5923.) The Attorney General must also consider whether the transaction may lessen
20 competition or tend to create a monopoly. (Code Regs. tit. 11, § 999.5, subd. (f)(9).) The Regents
21 disputes that the Attorney General has jurisdiction over this transaction under the Corporations
22 Code.

23 4. Based on his investigation into the transaction, the Attorney General is concerned
24 that the Proposed Transaction could risk adversely impacting access to services currently
25 provided at SMMC and SFMH, including but not limited to emergency medical services,
26 adolescent and adult psychiatric services, and the Bothin Burn Center at SFMH, which is the
27 largest, and one of only three, burn centers in Northern California. The Regents disputes such a
28 risk exists.

1 5. Based on his investigation into the transaction, the Attorney General is concerned
2 that the Proposed Transaction could risk lessening competition in the commercial and Medi-Cal
3 markets for inpatient GACH services in San Francisco, as well as other markets, in contravention
4 of Section 7 of the Clayton Act, 15 U.S.C. section 18. The Regents disputes that such a risk exists
5 and disputes the court’s jurisdiction under the Clayton Act, but concedes jurisdiction solely for
6 the purpose of entry and enforcement of the contemporaneously filed Assurance of Voluntary
7 Compliance, as otherwise referenced herein.

8 **THE PARTIES**

9 6. Plaintiff is the People of the State of California. Rob Bonta is the Attorney General
10 of the State of California and the chief law enforcement officer of the State under the California
11 Constitution, article V, section 13. The Attorney General may file any civil action on behalf of the
12 People of the State of California to enforce California’s laws for the protection of public rights
13 and interests, absent direct constitutional or legislative restrictions. (See, e.g., *People ex rel.*
14 *Deukmejian v. Brown* (1981) 29 Cal.3d 150, 157; *D’Amico v. Board of Medical Examiners*
15 (1974) 11 Cal.3d 1, 14-15.) This action also is brought by and through the Attorney General in his
16 sovereign capacity on behalf of the People of the State California pursuant to Section 16 of the
17 Clayton Act, 15 U.S.C. section 26.

18 7. The Regents is established by the California Constitution, Article IX, Section 9,
19 and under Organic Act, Chapter 244 of the Statutes of 1867-1868, section 11. The University of
20 California, administered and governed by The Regents, has ten campuses and six academic health
21 centers. Among them is UCSF Health, which is comprised of UCSF Medical Center at Parnassus,
22 Mission Bay, and Mount Zion campuses, the UCSF faculty’s clinical practices, Langley Porter
23 Psychiatric Hospital and Clinics, and UCSF Benioff Children’s Hospitals in Oakland and San
24 Francisco. The UCSF Medical Center locations in San Francisco are licensed to operate 1,019
25 beds.

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1 **JURISDICTION AND VENUE**

2 8. This Court has original jurisdiction over this action pursuant to California
3 Constitution article VI, section 10.

4 9. Venue is proper in this Court pursuant to Code of Civil Procedure section 395.5
5 because the alleged violations of law occurred in San Francisco; the contract at issue is to be
6 performed in San Francisco; and The Regents/UCSF Health maintain places of business in San
7 Francisco.

8 **FACTUAL ALLEGATIONS**

9 **I. THE AFFILIATION AGREEMENT**

10 10. On or about January 31, 2024, The Regents, on behalf of UCSF Health, and
11 Dignity Health (Dignity), a California nonprofit public benefit corporation, entered into an
12 Affiliation Agreement (Affiliation Agreement) whereby The Regents agreed to acquire control of
13 Dignity’s hospitals located in San Francisco: SMMC, a 275-licensed bed GACH hospital located
14 at 450 Stanyan Street, San Francisco, California, 94117; and SFMH, a 294-licensed bed GACH
15 community hospital located at 900 Hyde Street, San Francisco, California 94109; (and associated
16 outpatient clinics), for approximately \$97 million.

17 11. More specifically, in connection with the transaction, Dignity will transfer assets
18 used in the operation of SMMC to SFMH Corporation, as well as its interest in GoHealth urgent
19 care clinics in San Francisco, and Dignity Health Medical Foundation (DHMF), a California
20 nonprofit public benefit corporation that owns and operates clinics that support SMMC and
21 SFMH. DHMF will transfer those clinic assets to UCSF. Further, Dignity Community Care
22 (DCC), Colorado nonprofit corporation and the sole corporate member of SFMH Corporation,
23 will resign as the sole corporate member of SFMH Corporation, and The Regents/UCSF Health
24 will become the sole corporate member of SFMH Corporation.

25 12. On or about July 20, 2023, The Regents approved UCSF Health moving forward
26 with negotiations to acquire SMMC and SFMH and associated outpatient and urgent care clinics.

27 13. The Regents/UCSF Health have informed the Office of the Attorney General that
28 they expect the Affiliation Agreement to close on August 1, 2024.

1 **II. THE ATTORNEY GENERAL’S AUTHORITY TO REVIEW TRANSACTIONS INVOLVING**
2 **NONPROFIT HOSPITALS**

3 14. Corporations Code section 5920, subdivision (a)(1) states: “Any nonprofit
4 corporation that is defined in Section 5046 and operates or controls a health care facility . . . shall
5 be required to provide written notice to, and to obtain the written consent of, the Attorney General
6 prior to entering into any agreement or transaction to do either of the following: (A) Sell, transfer,
7 lease, exchange, option, convey, or otherwise dispose of, its assets to another nonprofit
8 corporation or entity when a material amount of the assets of the nonprofit corporation are
9 involved in the agreement or transaction.” The Attorney General asserts that he has jurisdiction
10 over this proposed transaction under the Corporations Code.

11 15. The Regents disputes that the Attorney General has jurisdiction over this
12 transaction under the Corporations Code.

13 **III. HEALTHCARE ACCESS AND EQUITY CONCERNS**

14 16. The Dignity Hospitals have historic importance in the provision of healthcare in
15 San Francisco and play an important role in the community by providing inpatient, outpatient,
16 and clinical services.

17 17. The Dignity Hospitals treat a large number of elderly, non-white, unhoused, and
18 publicly insured patients, providing essential healthcare services to San Francisco’s most
19 vulnerable populations.

20 18. Based on his investigation, the Attorney General is concerned that the Proposed
21 Transaction may have potential impacts on access to essential healthcare services provided by the
22 Dignity Hospitals to the local community. The Regents disagrees with this assessment.

23 **IV. COMPETITIVE IMPACT CONCERNS**

24 19. Based on his investigation, the Attorney General is concerned that the Proposed
25 Transaction may increase concentration in already highly concentrated markets, including
26 inpatient GACH services for commercial and Medi-Cal insureds, thereby potentially reducing
27 competition in San Francisco’s healthcare markets. The Regents disagrees that these concerns
28 exist.

1 20. For example, based on his investigation, the Attorney General is concerned that the
2 Proposed Transaction may be viewed as a 3-to-2 merger in the commercial inpatient GACH
3 services market and a 4-to-3 merger in the Medi-Cal inpatient GACH services market. The
4 Regents disagrees, pointing to other alternatives that it believes should be considered in any
5 competitive assessment of the market.

6 21. From the perspective of the Attorney General, increased concentration in GACH
7 inpatient service markets is particularly harmful to low-income populations, such as those served
8 by Medi-Cal and by Charity Care.¹

9 22. The Dignity Hospitals in particular provide important services to the most
10 vulnerable populations in San Francisco, including recipients of Medi-Cal and Charity Care, such
11 as the SFMH Emergency Department, SFMH Healing Center, and the adolescent inpatient
12 psychiatric unit at SMMC. SFMH also has an adult psychiatry unit that has served as overflow for
13 area hospitals for decades. In particular, SFMH has the most behavioral health transports in San
14 Francisco, the highest percentage of unhoused patients, and the most drug overdose cases.

15 23. The closure, winding down, or consolidation of any of these services could place a
16 severe burden on patients who are already the most vulnerable in San Francisco. Elimination and
17 consolidation of services harms competition with negative effects on access to care as patients
18 have reduced options, must travel farther, and in some cases may not be able to access care post-
19 consolidation.

20 **FIRST CAUSE OF ACTION (VIOLATION OF CORPORATIONS CODE SECTION 5920**
21 **AND CALIFORNIA CODE OF REGULATIONS, TITLE 11, SECTION 999.5)**

22 24. The People incorporate by reference and re-allege, as though fully set forth herein,
23 each and every allegation set forth in the preceding paragraphs of this Complaint.

24 25. The People assert they have jurisdiction over this transaction under section 5920 of
25 the Corporations Code and that the Defendant has failed to comply with its provisions as well as

26 _____
27 ¹ Charity Care is defined by the Internal Revenue Service as “free or discounted health
28 services provided to persons who meet the organization’s eligibility criteria for financial
assistance and are unable to pay for all or a portion of the services.” (See
<https://www.irs.gov/charities-non-profits/financial-assistance-policies-faps.>)

1 its implementing regulation, California Code of Regulations, title 11, section 999.5. The Regents
2 asserts that the Attorney General does not have jurisdiction over this Proposed Transaction under
3 the Corporations Code.

4 **SECOND CAUSE OF ACTION (VIOLATION OF 15 U.S.C. SECTION 18)**

5 26. The People incorporate by reference and re-allege, as though fully set forth herein,
6 each and every allegation set forth in the preceding paragraphs of this Complaint.

7 27. The People allege that the Proposed Transaction, if consummated, may lessen
8 competition or tend to create a monopoly in at least (a) the inpatient GACH services market for
9 commercial insurers and their enrollees in San Francisco, and (b) the inpatient GACH services
10 market for Medi-Cal insurers and their enrollees in San Francisco. The People also assert that the
11 Proposed Transaction may have negative effects on other markets, such as the market for
12 physician services, the market for outpatient services, and the market for unhoused/uninsured
13 individuals.

14 28. The Regents disputes the existence of such potential effects.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the People seek to resolve their dispute with The Regents over the
17 application of the Corporations Code and the Clayton Act, and pray for relief as follows:

18 A. The entry of the contemporaneously filed Assurance of Voluntary Compliance,
19 entered into by the Attorney General and by The Regents, under Government Code section
20 12533; and

21 B. For such other and further relief as the Court deems just and proper, including, in
22 the event an assurance of voluntary compliance is not entered, a case management conference
23 within fifteen (15) days to discuss next steps, including, but not limited to, whether the People
24 wish to request a declaratory judgment that the Proposed Transaction is subject to Attorney
25 General review under Corporations Code section 5920 and Code of Regulations, title 11, section
26 999.5, and an order requiring notice under Corporations Code section 5920.

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1 Dated: July 1, 2024

Respectfully submitted,

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ROB BONTA
Attorney General of California

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NATALIE TORRES
Acting Senior Assistant Attorney General

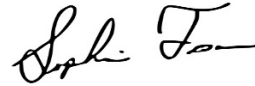
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