Docket #0829 Date Filed: 11/16/2018

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

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:

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

Chapter 11

Hon. Judge Ernest M. Robles

DEBTORS' NOTICE OF MOTION AND MOTION FOR ENTRY OF AN ORDER AUTHORIZING ENTRY INTO NEW COLLECTIVE BARGAINING AGREEMENT WITH ENGINEERS AND SCIENTISTS OF CALIFORNIA LOCAL 20, IFPTE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEVEN C. SHARRER

Hearing:
Date: December 12, 2018
Time: 10:00 am Pacific
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

1820151181116000000000013

PLEASE TAKE NOTICE that at the above-referenced date, time and location, Verity Health System of California, Inc., a California nonprofit benefit corporation and the Debtor herein ("VHS"), and O'Connor Hospital ("O'Connor"), debtors and debtors in possession (collectively with the above-referenced affiliated debtors (the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Cases"), will move the Court for entry of an order, pursuant to 11 U.S.C. §§ 363(b) and (c) and 105(a), authorizing to enter into a new collective bargaining agreement ("CBA") with Engineers and Scientists of California Local 20, IFPTE ("Local 20," and together with O'Connor, the "Parties").

Generally, the CBA will implement a new collective bargaining arrangement between the Parties. The principal terms of the CBA are set forth in the Memorandum and in full detail in the Tentative Agreement (including incorporated terms attached thereto), attached as Exhibit "1" thereto. The Debtors believe entry into the CBA should be authorized in the ordinary course of the Debtors' business; however, for the avoidance of doubt, and because the Tentative Agreement expressly requires it, the Debtors seek this Court's express authority to enter into the CBA. The Debtors submit that entry into the CBA is in the best interest of the Debtors' estates and should be approved.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice of Motion and Motion, the Memorandum, the Declaration of Richard G. Adcock in Support of Emergency First-Day Motions, filed August 31, 2018 (the "First-Day Declaration") [Docket No. 8], the attached Declaration of Steven C. Sharrer, supporting statements, arguments and representations of counsel who will appear at the hearing on the Motion, the record in this case, and any other evidence properly brought before the Court in all other matters of which this Court may properly take judicial notice.

PLEASE TAKE FURTHER NOTICE that any party opposing or responding to the Motion must file a response ("Response") with the Bankruptcy Court and serve a copy of it upon the moving party and the United States Trustee not later than 14 days before the date designated for the hearing. A Response must be a complete written statement of all reasons in opposition to

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the Motion or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities.

PLEASE TAKE FURTHER NOTICE that, pursuant to LBR 9013-1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to be consent to the relief requested herein.

Dated: November 16, 2018

DENTONS US LLP
SAMUEL R. MAIZEL
SAM J. ALBERTS
TANIA R. MOYRON

By */s/Tania M. Moyron*
Tania M. Moyron

Attorneys for the Chapter 11 Debtors and Debtors In Possession

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Since February 2018, the Debtors have been in negotiations with Local 20 to enter into the Collective Bargaining Agreement ("CBA"). The Debtors submit that entering into the CBA is in the best interest of the Debtors' estates for at least three reasons: (1) O'Connor's employee physical therapists, physical therapist assistants, occupational therapists, speech language pathologists, registered dietitians and discharge coordinators (collectively, the "Therapy Plus Unit") have selected Local 20 as their exclusive representative (as such, the "Local 20 Therapy Plus Unit"); (2) the County of Santa Clara, which is the stalking horse bidder for O'Connor, also uses Local 20 to represent its Therapy Plus Unit; and (3) the negotiated terms are not only in-market but provide specific identifiable benefits to the Debtors within the context of these Cases (*e.g.*, acceptable cost, no assumption requirements) – including the upcoming sale of O'Connor assets. Although entering into such an agreement is arguably an ordinary course transaction, in an abundance of caution, and because the Tentative Agreement expressly requires it, the Debtors seek Court approval of the CBA, on notice to parties in interest.

II.

JURISDICTION

This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for this Motion is 11 U.S.C. § 363(b) and (c).

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III.

STATEMENT OF FACTS

A. General Background

1. On August 31, 2018 ("Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[1] The Cases are currently being jointly administered before the Bankruptcy Court [Docket No. 17]. Since the commencement of their Cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that operate six acute care hospitals: O'Connor, St. Louise Regional Hospital ("SLRH"), St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastside (collectively, the "Hospitals") and other facilities in the state of California. Seton and Seton Medical Center Coastside operate under one consolidated acute care license.

3. VHS, the Hospitals, and their affiliated entities (collectively, "Verity Health System") operate as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. First-Day Decl., at 4, ¶ 12. On the Petition Date, the Debtors had approximately 850 inpatients. *Id.* at 6, ¶ 17. The scope of the services provided by the Verity Health System is exemplified by the fact that in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.*, at 4, ¶ 12.

4. Each of the Debtors is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, except for Verity Holdings, LLC, DePaul Ventures, LLC, and DePaul Ventures - San Jose Dialysis, LLC.

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[1] All references to "§" or "section" herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended.

5. On September 14, 2018, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors in these Cases. [Docket No. 197].

B. Sale of O'Connor

6. On October 31, 2018, the Court entered the *Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (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* [Docket No. 724] (the "Bidding Procedures Order").

7. The Bidding Procedures Order approved the County of Santa Clara, a political subdivision of the State of California (the "County") or its designated affiliate, as the Stalking Horse Purchaser of all assets (excluding cash, accounts receivables and causes of action) of O'Connor and SLRH.

8. A hearing on the sale (the "Sale") is currently scheduled for December 19, 2018.

C. Local 20

9. O'Connor employs the Local 20 Therapy Plus Unit, which was certified on or about late September 2017 via an election, supervised by the National Labor Relations Board. O'Connor and the Local 20 Therapy Plus Unit began to bargain an initial contract in February 2018.

10. The Local 20 Therapy Plus Unit delivers physical therapy, occupational therapy, speech therapy and dietary clinical expertise to O'Connor's in and out patients. There are approximately 45 members of the Local 20 Therapy Plus Unit. These positions are historically difficult to fill, given their scarcity in the industry, due the degree of education, training and licensure required. The labor pool is therefore small.

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D. The CBA

11. Since February 2018, the Parties have been in active negotiations for an initial collective bargaining agreement to govern the terms and conditions of employment of the Local 20 Therapy Plus Unit. The Parties met frequently, and as of the Petition Date, had reached tentative agreement on the majority of the terms of an initial collective bargaining agreement, except for wages, a few work rules, and term.

12. Postpetition, the parties resumed negotiations, and Local 20 agreed to accept all pending management proposals without further bargaining. Local 20 agreed to a one-year term of contract. Importantly, due to the pending bankruptcy and Sale, Local 20 agreed to withdraw the Parties' tentative agreement which would have obligated a buyer to assume the terms of the CBA. Instead, Local 20 agreed to abide by successorship as provided by law.

13. Pursuant to the Tentative Agreement (and the incorporated previous tentative agreements on terms), attached hereto as Exhibit "1,"[2] the CBA provides for the following principle terms:

(a) Recognition of Local 20 as the exclusive representative of the O'Connor PT/OTs, along with Local 20's right to bargain and act with respect to the O'Connor PT/OTs' wages, hours and other terms and conditions of employment (Art. 1);

(b) Indemnification of O'Connor by Local 20 related to employee membership (Art. 4, Sec. 6);

(c) Prohibition on strikes and lockouts during the term of the CBA (Art. 31); and

(d) Preservation of successor obligations provided for under law in the case of a change in ownership of O'Connor (Art. 34).

14. Furthermore, the Tentative Agreement provides that the Debtors would seek Court approval of the terms of the Tentative Agreement within ten business days from the signing thereof, or November 16, 2018. Accordingly, the Debtors are filing this Motion. If the Court declines to confirm the Debtors' authority to enter them, the Tentative Agreement provides that Local 20 will not initiate legal proceedings (including the filing of Unfair Labor Practice Case

[2] The Tentative Agreement has been attached with certain economic terms redacted. A non-redacted version will be made available to this Court's chambers, the Committee, and other parties in interest who request a copy subject to signing an appropriate non-disclosure agreement.

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Forms), but all of Local 20's rights and all of O'Connor's obligations would be preserved under the National Labor Relations Act ("NLRA"). If the Court does confirm the Debtors' authority, the CBA will have an effective date of November 1, 2018.

IV.

ARGUMENT

A. Entry Into The CBA Is In The Debtors' Ordinary Course Of Business Pursuant To § 363(c)

Section 363(c) provides that a debtor in possession "may enter into transactions . . . in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The ordinary course of business standard embodied in this provision is intended to allow a debtor in possession the flexibility to run its business during its chapter 11 proceedings. *See Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re JohnsManville Corp.)*, 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986). A debtor in possession may, therefore, use, sell or lease property of the estate without the need for prior court approval if the transaction is in the ordinary course of business. *Id.* at 616 (holding that ordinary course of business use of estate property does not require a prior hearing).

The Bankruptcy Code does not define "ordinary course of business." *In re Dant & Russell, Inc.*, 853 F.2d 700, 704 (9th Cir. 1988). However, the Ninth Circuit applies two tests to determine whether a transaction has been conducted in the ordinary course of business: the "horizontal" test and the "vertical" or "creditor's expectation" test. *See Dant & Russell*, 853 F.2d at 704. The horizontal test "may be described as involving an industry-wide perspective in which the debtor's business is compared to other like business." *Id.* The vertical test considers the transaction "from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a nature different from those he accepted when he decided to extend credit." *Id.* (quoting *Johns-Manville*, 60 B.R. at 616). Or, more simply, this test compares the debtor's prepetition business activities with its postpetition transactions. *Id.* Entry into the CBA satisfies both tests.

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Under the horizontal test, collective bargaining agreements like the CBA are typical arrangements among companies in the Debtors' industry. Moreover, under the National Labor Relations Act, 29 U.S.C. §§ 151-169, the choice of union representation belongs to the employee, not the employer. So given that the Local 20 Therapy Plus Unit has chosen to be represented by Local 20, any attempt to contract with a different union would bring along an entirely new host of issues. Accordingly, the Debtors believe entry into the CBA falls within the standard, ordinary course practice of companies that operate hospitals and should be permitted.

Under the vertical test, creditors' reasonable expectations of a debtor's "ordinary course of business" are based on the debtor's specific prepetition business practices and norms, and the expectation that the debtor will conform to those practices and norms while operating as a debtor in possession. *In re Garofalo's Finer Foods, Inc.*, 186 B.R. 414, 425 (N.D. Ill. 1995). Thus, a fundamental characteristic of an "ordinary" postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Commerical Credit (In re Nat'l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (9th Cir. B.A.P. 1995). The size, nature and type of business, and the size and nature of the transactions in question, are all relevant to determining whether the transactions at issue are ordinary. *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 598 (M.D. Tenn. 1990); *Johns-Manville Corp.*, 60 B.R. at 617; *see also Dant & Russell*, 853 F.2d at 705. "Accordingly, a postpetition transaction undertaken by the debtor that is similar in size and nature to prepetition transactions undertaken by the debtor would be within the ordinary course of business." *Garofalo's*, 186 B.R. at 426.

As noted above, the Debtors entered into and continued negotiations with Local 20 on behalf of the Local 20 Therapy Plus Unit in the ordinary course of business six months prepetition. Furthermore, as noted in the First-Day Declaration, the Debtors are party to numerous prepetition collective bargaining agreements with unions representing other employees. Accordingly, the Debtors believe that entering into the CBA is consistent with their own past, ordinary course practice.

Under the authority provided by § 363(c)(1), the Debtors believe entering into the CBA is within their ordinary course of business and consistent with standard industry practice. The

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Debtors submit that authority to enter into the CBA is appropriate and in the best interests of the Debtors, their estates, and all parties in interest in these Cases and should be permitted.

B. This Court Also Has Authority Pursuant To §§ 363(b)(1) And 105(a) To Grant The Relief Requested

Ample authority also exists for approval of the CBA under §§ 363(b) and 105(a). Section 363(b)(1) provides, in relevant part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Furthermore, pursuant to § 105(a), "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Essentially, § 105(a) provides a statutory counterpart to the bankruptcy court's otherwise inherent and discretionary equitable powers. *See In re Sasson*, 424 F.3d 864, 874 (9th Cir. 2005); *In re Halvorson*, 581 B.R. 610, 636 n.91 (Bankr. C.D. Cal. 2018).

Although section 363 does not set forth a standard for determining when it is appropriate for a Court to authorize the use of a debtor's assets, courts in the Ninth Circuit and others, in applying this section, have required that it be based upon the sound business judgment of the debtor. *See In re Lahijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005) ("Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection."); *In re Galleria USA, Inc.*, No. 8:09-BK-20651-TA, 2010 WL 4519724, at *2 (Bankr. C.D. Cal. Jan. 13, 2010) (finding sale of assets under § 363(b) was "a reasonable exercise of the Trustee's business judgment"). In *In re American Development Corp.*, when asked by debtor to "approve a transaction that is not covered by a specific provision in the Bankruptcy Code, that is not in the ordinary course of business, and that may have a significant impact on debtor's reorganization," this Court considered, among other things, whether "the debtor satisfied the business judgment test by demonstrating good and sound business reasons for the proposed transaction." 95 B.R. 735, 739 (Bankr. C.D. Cal. 1989).

To the extent there is any doubt that the Debtors entering into the CBA is not in the ordinary course of their business, the Debtors should be authorized to do so pursuant to §§ 363(b) and 105(a). The business judgment standard requires that the bankruptcy court "presume that the

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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." *Pomona Valley Med. Grp.*, 476 F.2d at 670. As a result, the bankruptcy court should approve the Debtors' entry into the CBA "unless it finds that the debtor-in-possession's conclusion . . . 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.'" *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 726 F.2d 1043, 1047 (4th Cir. 1985)).

The Debtors' conclusion that entry into the CBA is advantageous is not at all unreasonable, let alone manifestly so. First, the new contractual relationship embodied in the CBA provides stability and flexibility. Specifically, the provision governing successor liability in a change in ownership of O'Connor gives the Debtors flexibility to make appropriate decisions in the course of these Cases, including regarding any sale of O'Connor. Importantly, due to the pending bankruptcy and Sale, Local 20 agreed to withdraw the Parties' tentative agreement which would have obligated a buyer to assume the terms of the CBA. Sharrer Decl., ¶ 8. Instead, Local 20 agreed to abide by successorship as provided by law. *Id.* This is a significant concession to aid in the sale process. *Id.*

Moreover, entry into the CBA avoids the potential labor unrest and disruption that might be occasioned by a prolonged period of operation without a labor agreement, and the obvious loss of value arising therefrom. Sharrer Decl., ¶ 9. Failure to reach an agreement with Local 20 would result in the possibility of the as yet unrepresented Therapy Plus Unit to strike or engage in a work stoppage. *Id.* Strikes can create disruption of normal hospital operations and may result in reduction of patient volume. *Id.* Especially while the Debtors are working on efficiently effectuating a successful sale of O'Connor, labor unrest could be detrimental as a strike could impact the purchase value and the uncertainty created could cause attrition of valuable employees and disrupt continuity of in and out patient care. *Id.*

The exceedingly complex and arduous process to reach collective bargaining agreements with an important and valued employee group clearly meets the requirements of § 363 and the applicable authority in this Circuit. The CBA will provide a stable labor force for the Debtors

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while the sale of O'Connor is pending. Sharrer Decl., ¶ 10. Just as importantly, the terms of the CBA are reasonable and the negotiated wages adjustments are in line with the local market. *Id.*

Accordingly, the Debtors submit that the CBA should be approved under § 363(c)(1) as an ordinary course transaction, or else under §§ 363(b) and 105(a) of the Bankruptcy Code as a sound exercise of the Debtors' reasonable business judgment and as being in the best interests of the Debtors' estates and all parties in interest.

C. Waiver Of Bankruptcy Rule 6004(h) Is Necessary And Appropriate

The Debtors also request that the Court waive the 14-day stay of the effectiveness of any order granting this Motion pursuant to Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 6004(h). Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). Here, a waiver of the 14-day stay is necessary and appropriate because the Debtors are continuing to operate O'Connor, and making the CBA effective immediately will avoid costs associated with uncertainty surrounding the operation of O'Connor without a labor agreement in place. Therefore, a waiver of the 14-day stay is appropriate.

The Debtors have endeavored to enter into the CBA and bring it to the Court in a timely manner (within ten business days of the Parties' entry into the Tentative Agreement pursuant to the terms thereof). The Debtors assert that approval of the CBA is necessary and appropriate under the Bankruptcy Code and the circumstances of these Cases.

V.

CONCLUSION

Based on the foregoing, the Debtors request the (i) the entry of an order granting the Motion, and (ii) granting such other and further relief as is just and proper.

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Dated: November 16, 2018

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DECLARATION OF STEVEN C. SHARRER

I, Steven C. Sharrer, declare, that if called as a witness, I would and could competently testify thereto, of my own personal knowledge, as follows:

1. I am the Chief Human Resources Officer for Verity Health System.[3] I became the Debtors' Chief Human Resources Officer effective August 21, 2017. As Chief Human Resources Officer, I lead talent recruitment and management, labor relations and workforce planning and development. My role is to ensure that the Verity Health System's human resources programs are aligned with System goals.

2. I have more than twenty-five years of human resources management experience in the healthcare industry alone, including most recently as Vice President for Human Resources at Hazel Hawkins Memorial Hospital in Hollister, Saint John's Health Center in Santa Monica and Sisters of Charity of Leavenworth Health System in Santa Monica. Between 2000 and 2007, I led the human resources departments at two hospitals within the Verity Health System: O'Connor Hospital ("O'Connor") and Saint Louise Regional Hospital.

3. I received my bachelor's degree in history at the University of Tampa and my master's degree in business administration at Golden Gate University. I am also a veteran of the U.S. Army and retired Lieutenant Colonel.

4. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge, my review of relevant documents, information provided to me by employees of the Debtors or the Debtors' legal and financial advisors, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and the healthcare industry. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

5. This Declaration is in support of the *Debtors' Notice of Motion and Motion for Entry of an Order Authorizing Entry Into New Collective Bargaining Agreement With Engineers*

[3] As defined in the Motion (defined below), the "Verity Health System" includes Verity Health System of California, Inc. ("VHS"), five California nonprofit public benefit corporations that operate six acute care hospitals, and their affiliated entities.

and Scientists of California Local 2, IFPTE ("Motion")[4] and for all other purposes permitted by law.

6. O'Connor employs physical therapists, physical therapist assistants, occupational therapists, speech language pathologists, registered dietitians and discharge coordinators (collectively, the "Local 20 Therapy Plus Unit"). The Local 20 Therapy Plus Unit was certified on or about late September 2017 via an election, supervised by the National Labor Relations Board. O'Connor and the Local 20 Therapy Plus Unit began to bargain an initial contract in February 2018.

7. The Local 20 Therapy Plus Unit provides physical therapy, occupational therapy, speech therapy and dietary clinical expertise to O'Connor's in and out patients. This care is critical to recovery, rehabilitation and discharge of in and out patients. There are approximately 45 members of the Local 20 Therapy Plus Unit. These positions are historically difficult to fill, given their scarcity in the industry, due to the degree of education, training and licensure required. The labor pool is therefore small.

8. Since February 2018, the parties have been in active negotiations for an initial collective bargaining agreement to govern the terms and conditions of employment of the Local 20 Therapy Plus Unit. The parties met frequently, and as of August 31, 2018 (the date of the bankruptcy filing) had reached tentative agreement on the majority of the terms of an initial collective bargaining agreement, except for wages, a few work rules, and the term of the agreement. Following the bankruptcy filing, the parties resumed negotiations, and the Engineers and Scientists of California Local 20, IFPTE ("Local 20") agreed to accept all pending management proposals without further bargaining. Local 20 agreed to a one-year term of contract. Importantly, due to the pending bankruptcy and sale, Local 20 agreed to withdraw the parties' tentative agreement which would have obligated a buyer to assume the terms of the collective bargaining agreement. Instead, Local 20 agreed to abide by successorship as provided by law. This is a significant concession to aid in the sale process.

[4] Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

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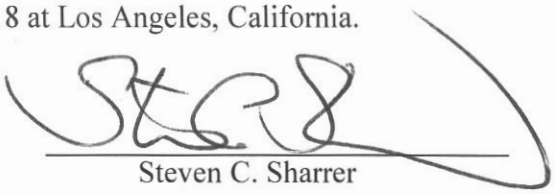
9. In O'Connor's business judgment, it was important to reach a 1-year agreement with Local 20 to avoid labor unrest and labor strike. A strike creates disruption of normal hospital operations and may result in reduction of patient volume. A strike during a sale of O'Connor could impact the purchase value and the uncertainty created could cause attrition of valuable employees and disrupt continuity of in and out patient care.

10. The terms of the CBA are reasonable and the negotiated wages adjustments are in line with the local market. The CBA will provide a stable labor force for the Debtors for the near future pending a sale.

11. The CBA shall be immediately effective upon the approval by the Court, as the Local 20 Therapy Plus Unit ratified the terms of the CBA on or about November 9, 2018. Attached to the Motion as Exhibit "1" is a true and correct copy of the parties' ratified tentative agreement.

12. I declare under penalty of perjury and of the laws in the United States of America, the foregoing is true and correct.

Executed this 16th day of November, 2018 at Los Angeles, California.



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