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Debtors In Possession

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

Hon. Judge Ernest M. Robles

DEBTORS' MOTION UNDER § 1113 OF THE BANKRUPTCY CODE TO REJECT AND TERMINATE THE TERMS OF CALIFORNIA LICENSED VOCATIONAL NURSES ASSOCIATION'S COLLECTIVE BARGAINING AGREEMENT WITH O'CONNOR HOSPITAL UPON THE CLOSING OF THE SALE OF THESE HOSPITALS TO THE COUNTY OF SANTA CLARA

[DECLARATIONS OF RICHARD G. ADCOCK; SAM J. ALBERTS; AND JAMES M. MOLONEY FILED CONCURRENTLY IN SUPPORT]

Hearing:
Date: January 30, 2019
Time: 10:00 am
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

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 the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), will move (the "Motion"), pursuant to §§ 363, 365, and 1113 of the Bankruptcy Code,[1] and Rules 9007 and 9014 for the entry of an order rejecting and terminating all terms of Collective Bargaining Agreement between O'Connor Hospital ("OCH") and California Licensed Vocational Nurses Association (the "CLVNA CBA"), which expires October 31, 2019, to be effective upon the "Closing" (as that term is defined in the Asset Purchase Agreement dated October 1, 2018 (the "APA") [Docket No. 365-1] between VHS, Verity Holdings, LLC, a California limited liability company, and Santa Clara County ("SCC") for the sale of the assets of Saint Louise Regional Hospital and OCH (collectively, the "Hospitals") to SCC) as approved by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that this relief is required because: (a) the Debtors are liquidating their assets in chapter 11, and will, at the end of the process, no longer operate the Hospitals, (b) after a thorough marketing process, no bidder (other than SCC) emerged seeking to acquire the assets of the Hospitals (c) as of the Closing Date (as defined in the APA), the Debtors will no longer employ the employees currently represented by CLVNA at the Hospitals and, pursuant to the *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Santa Clara County Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granted Related Relief* (the "Sale Order") [Docket No. 1153], the Hospitals are being sold free and clear of the CLVNA CBA, and (d) after the sale to SCC closes, the Debtors have no justifiable reason to be bound by the terms of the CLVNA CBA or to incur further obligations

[1] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All "Rule" references are to the Federal Rules of Bankruptcy Procedure. All "LBR" references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

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under them, which, unless terminated, will add additional and undue financial burden of the estates and otherwise harm the Debtors' reorganization.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice of Motion and Motion, the *Declaration of Richard G. Adcock in Support of Debtors' § 1113 Motions* filed concurrently herewith, the *Declaration of James Moloney in Support of Debtors' § 1113 Motions* filed concurrently herewith, the *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* (the "First-Day Declaration") [Docket No. 8], the *Declaration Of James Moloney In Support Of 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 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* (the "Moloney Bid Procedures Declaration") [Docket No. 394] and the *Declaration of James Moloney* filed in support of and attached to the *Debtors' Memorandum in Support of Entry of Order (1) Approving Sale of Certain Assets to Santa Clara County Free and Clear of All Encumbrances; (2) Approving Debtors' Assumption and Assignment of Certain Unexpired Leases and Executory Contracts and Determining Cure Amounts and Approving Debtors' Rejection of Those Unexpired Leases and Executory Contracts Which Are Not Assumed and Assigned; (3) Waiving the 14-Day Stay Periods Set Forth in Bankruptcy Rules 6004(H) and 6006(D); and (4) Granting Related Relief* (the "Moloney Sale Declaration") [Docket No. 1041], 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, pursuant to paragraph 33 of the Sale Order, this Motion will be heard on January 30, 2019, at 10:00 a.m., Pacific Time.

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PLEASE TAKE FURTHER NOTICE that, pursuant to the Sale Order, any party opposing or responding to the Motion must file objections due on January 16, 2019. A response must be a complete written statement of all reasons in opposition to 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. Further, any replies to any objection and in support of the Motion are due on January 23, 2019.

Dated: January 2, 2019

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

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Debtors seek entry of an order allowing them to reject and terminate all terms of the Collective Bargaining Agreement between O'Connor Hospital ("OCH") and California Licensed Vocational Nurses Association ("CLVNA), effective November 2016 – October 31, 2019 (the "CLVNA CBA") (attached as **Exhibit 1**) effective upon the "Closing" (as that term is defined in the Asset Purchase Agreement dated October 1, 2018 (the "APA"))[2] of the sale of the assets of the Hospitals (defined, *infra*) to Santa Clara County ("SCC").

The requested relief is required because (a) the Debtors are liquidating their assets in chapter 11, and will, at the end of the process, no longer operate hospitals, if they operate anything at all, (b) after a thorough marketing process, no bidder (other than SCC) emerged seeking to acquire the assets of SLRH and OCH (the "Hospitals"), (c) as of the Closing Date (as defined in the APA), the Debtors will no longer employ the employees currently represented by CLVNA at the Hospitals and, pursuant to the *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Santa Clara County Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granted Related Relief* (the "Sale Order") [Docket No. 1153], the Hospitals are being sold free and clear of the CLVNA CBA, and (d) upon Closing, the Debtors have no justifiable reason to be bound by the terms of the CLVNA CBA or to incur further obligations under them, which, unless terminated, will add additional and undue financial burden to the estates and otherwise harm the Debtors' reorganization..

The Debtors' Motion should be granted, as the requirements of § 1113 have been met (and will be otherwise completed prior to resolution of the Motion), for the following reasons:

- The Debtors have met with and submitted a formal Proposal (defined, *infra*) to CLVNA and provided CLVNA with current, necessary information to evaluate the Proposal. A copy of the Proposal is attached as **Exhibit 2**.[3]

[2] The APA is filed under Docket No. 365-1.

[3] Although the form and rationale for the relief is straight forward, the Debtors have advised CLVNA that they will respond to all reasonable information requests and consider a "counter proposal" should one be timely presented.

- The relief is necessary, equitable and sought in good faith, because, without the relief, the Debtors would be unable to sell the Hospitals to SCC, and SCC was the only bidder for the Hospitals after a thorough marketing process revealed that (i) no party emerged willing to place a bid for the Hospitals,[4] and (ii) no other party was willing to assume the CLVNA CBA.
- Subject in all respects to the terms and conditions of the APA, SCC will provide the Debtors' employees the opportunity to apply for SCC employment and be represented by the SCC public union.
- Upon the Closing of the sale to SCC, the Debtors will have no use for the CLVNA CBA, and, absent rejection and termination of it, the Debtors could incur additional and unnecessary financial burdens that would harm their estates and endanger the prospect for a successful reorganization.

For these and other reasons set forth below, the Court should permit the Debtors to reject and terminate all provisions of the CLVNA CBA (**Exhibit 1**) effective upon Closing.

II. JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of these cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

III. STATEMENT OF FACTS

A. General Background.

1. On August 31, 2018 ("Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). 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

CLVNA has provided the Debtors with information requests that the Debtors will respond to in a timely manner before the hearing on this motion.

[4] See *Memorandum Of Decision Overruling Objections Of The California Attorney General To The Debtors' Sale Motion*, Docket No. 1146, at 3.

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corporate member of five Debtor California nonprofit public benefit corporations that operate six acute care hospitals, including OCH and SLRH and other facilities in the state of California.

3. SLRH owns real property commonly known as: (i) 9400 No Name Uno, Gilroy, CA 95020, and the hospital and helipad thereon; and (ii) 705 Las Animas Road, Gilroy, CA 95020. SLRH opened in 1989 in the Morgan Hill area of Santa Clara County. In December 1999, the Daughters of Charity of St. Vincent de Paul relocated the hospital to Gilroy and renamed it Saint Louise Regional Hospital. Today, the Hospital's 93 licensed-bed facility and 24-hour emergency department provide services to the residents of southern Santa Clara County, including Morgan Hill, San Martin, and Gilroy. The emergency department has eight licensed emergency treatment stations. SLRH Hospital also has five surgical operating rooms for inpatient and outpatient surgical procedures. Ten of SLRH's Hospital's 21 licensed skilled nursing beds are in suspense. The SLRH Hospital provides comprehensive healthcare services including cancer, emergency, rehabilitation, and surgical care. The SLRH Hospital is accredited by The Joint Commission.

4. SLRH owns and operates the De Paul Urgent Care Center. The De Paul Urgent Care Center is located on the DePaul Campus, an approximately 25 acre campus located in Morgan Hill, and offers patients non-emergency medical services seven days a week. The De Paul Urgent Care Center treats non-life threatening cases, such as minor injuries and lacerations, strep throat, sinus infections, rashes, nausea, vomiting, colds, flu, and fever.

5. OCH owns real property commonly known as: (i) 455 O'Connor Dr. San Jose, CA 95128, and partial interest in the medical office building thereon; (ii) 2105 Forest Ave, San Jose, CA 95128, and the acute hospital, medical office building, and all of the facilities located thereon.

6. OCH is a nonprofit public benefit corporation that operates a 358 licensed-bed, general acute care hospital that serves residents from the greater San Jose area. The OCH Hospital has an emergency department with 23 emergency treatment stations. It also has 11 surgical operating rooms and two cardiac catheterization labs. The Hospital offers a comprehensive range of healthcare services, including emergency, cardiac, orthopedic, cancer, obstetrics, and sub-acute care services. The hospital is accredited by The Joint Commission.

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7. 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. *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* at 4, ¶ 12 (the "First-Day Declaration"). 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, its Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.*, at 4, ¶ 12.

B. THE CBAS BETWEEN THE DEBTORS AND CLVNA.

8. The Debtors entered into a prepetition CBA with CLVNA regarding the OCH Hospital which is still effective -- the CLVNA CBA (attached as **Exhibit 1**). Approximately fifteen (15) employees are covered under the CLVNA CBA (the "CLVNA Represented Employees"). These employees are licensed vocational Nurses and work primarily on the clinical units of OCH.

C. THE DEBTORS' PRE AND POST-PETITION EFFORTS TO SELL THE HOSPITALS.

9. Previously, the Hospitals were owned by the Daughters of Charity Healthcare System ("DCHS"). Despite continuous efforts to improve operations, operating losses continued to plague the health system due to, among other things, mounting labor costs, low reimbursement rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for among other hospitals, OCH and SLRH. First-Day Declaration, at 22, ¶ 87.

10. In early 2014, DCHS announced that they were beginning a process to evaluate strategic alternatives for the health system. First-Day Declaration, at 22-23, ¶ 87. Throughout 2014, DCHS explored offers to sell their hospital system, including the Hospitals, and, in October 2014, they entered into an agreement with Prime Healthcare Services and Prime Healthcare Foundation (collectively, "Prime") to sell the health system. *Id.* However, to keep the hospitals open, DCHS needed to borrow $125 million to mitigate immediate cash needs during the sales process; in other words, to allow DCHS to continue to operate until the sale could be consummated. In early 2015, the California Attorney General consented to the sale to Prime,

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subject to conditions on that sale that were so onerous that Prime terminated the transaction. *Id.*

11. In 2015, DCHS again marketed their health system for sale, and, again, focused on offers that maintained the health system as a whole, and assumed all the obligations. First-Day Declaration, at 23, ¶ 88. In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC ("BlueMountain"), a private investment firm, to recapitalize its operations and transition leadership of the health system in the restructured Verity Health System (the "BlueMountain Transaction"). *Id.*

12. In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of $100 million to the health system, arrange loans for another $160 million to the health system, and manage operations of the health system, with an option to buy the health system at a future time. In addition, the parties entered into a System Restructuring and Support Agreement (the "Restructuring Agreement"), and DCHS's name was changed to Verity Health System of California, Inc. First-Day Declaration, at 23, ¶ 89.

13. On December 3, 2015, the California Attorney General approved the BlueMountain Transaction, subject to conditions. Despite BlueMountain's infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system did not prosper. First-Day Declaration, at 24, ¶ 93.

14. In July 2017, NantWorks, LLC ("NantWorks") acquired a controlling stake in Integrity. NantWorks brought in a new CEO, CFO, and COO. NantWorks loaned another $148 million to the Debtors. First-Day Declaration, at 24, ¶ 94. Despite the infusion of capital and new management, it became apparent that the problems facing VHS were too large to solve without a formal court-supervised restructuring. Thus, despite VHS' great efforts to revitalize its hospitals and improvements in performance and cash flow, the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities, an inability to renegotiate CBAs (including the CBAs here) or payor contracts, the continuing need for significant capital expenditures for seismic obligations and aging infrastructure, and the general headwinds facing the hospital industry, made success impossible. Losses continued to amount to approximately $175 million annually on a cash flow basis. First-Day Declaration, at 24-25, ¶ 95.

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15. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and sell their assets. In June 2018, the Debtor engaged Cain Brothers, a division of KeyBanc Capital Markets ("Cain"), to identify potential buyers of its hospitals and related assets and commenced discussions with those potential buyers.[5] First-Day Declaration, at 34, ¶ 128.

16. Cain prepared a Confidential Investment Memorandum and organized an online data site to share information with potential buyers and contacted over 110 strategic and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction regarding the Debtors and has advanced significantly towards achieving sales. First-Day Declaration, at 34-35 ¶ 129; Moloney Declaration at ¶ 4.

17. By August 2018, as a result of its ongoing and broad marketing process, Cain had received 11 Indications of Interest ("IOI"), and continued to develop potential sales. First Day Declaration, at 35, ¶ 130; Moloney Declaration at ¶ 5.

D. THE SALE AND THE PURCHASE CONDITION TO NOT ASSUME CBAS.

18. SCC sent the Debtors an IOI, and, after due consideration, the Debtors filed a motion [Docket No. 365][6] seeking entry of an order: (a) establishing SCC as the stalking horse bidder for its two hospitals in Santa Clara County -- SLRH and OCH and related assets (the "Assets"); (b) approving the form of the APA, dated October 1, 2018, between VHS, Verity Holdings, LLC, OCH and SLRH, and SCC as a stalking horse bidder for this transaction; (c) setting bid procedures to establish guidelines for parties interesting in making an overbid; (d) setting an auction to be held if necessary; and (e) setting a hearing for the Court to approve the winning bidder (the "Sale Hearing").

19. The Debtors had vigorously marketed the Assets and signed the APA because

[5] The Debtors fully incorporate the previously filed Moloney Bid Procedures Declaration [Docket No. 394] and the Moloney Sale Declaration [Docket No. 1041] (together, with the concurrently filed *Declaration of James Moloney in Support of Debtors' § 1113 Motions* (the "Moloney Declaration") (together, the "Moloney Declarations"), which describe in detail the Debtors' pre- and postpetition marketing activities of their assets, including the Hospitals.

[6] *Motion For The Entry Of (I) An 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; Memorandum Of Points And Authorities In Support Thereof.*

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SCC's bid represented a fair market value for the Assets, and SCC would maintain the healthcare characteristics of the Debtors' Hospitals, continuing patient care for the communities served by the Hospitals. First-Day Declaration at 25, ¶ 97 ("The goals of the Debtors' restructuring are to maintain the Debtors' business operations; preserve the going-concern value of the Debtors' businesses, its stakeholders, and parties in interest; and, most importantly, to protect the health and wellbeing of the patients who are treated at the Hospitals and the jobs of the Debtors' approximately 7,000 employees."). The Court granted the Debtors' Motion (the "Bidding Procedures Order") [Docket No. 724], and set the Sale Hearing for December 19, 2018.

20. Under the APA, SCC agreed:

> Subject to Purchaser's standard hiring practices (including, but not limited to, those practices contained in Purchaser's Charter, Ordinance Code, regulations, and policies and procedures), Purchaser agrees to offer provisional employment, effective as of the Effective Time, to substantially all employees of Hospital Sellers who are listed on Schedule 5.3.1 who are actively employed and in good standing with a Hospital Seller as of Closing (the "Seller Employees"), in County positions consistent with those positions provided by the Hospital Sellers as of Closing; provided, however, (a) Seller Employees must meet the minimum qualifications for the specific position offered, and (b) standard Purchaser pre-employment screenings will be performed on all Seller Employees as a condition to employment with Purchaser. Any of the Seller Employees who accept a provisional offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the "Hired Employees." Purchaser's labor contracts with its employee labor organizations may require the Purchaser to make available and/or offer current Purchaser employees the opportunity to transfer to a comparable position at one of the Hospitals. Once this process is complete, if required, Purchaser will afford Hired Employees the opportunity to apply for permanent-track positions with Purchaser. For the avoidance of doubt, the Seller Employees shall not include any employees of Verity Health System of California, Inc. or any other affiliate of any Seller unless such individual is listed on Schedule 5.3.1. Notwithstanding anything to the contrary in this Agreement, Purchaser shall make decisions with respect to hiring Seller Employees who served in a management role prior to or as of Closing on a case-by-case basis, but Purchaser shall not be obligated hereunder to offer to employ any of such individuals. Substantially all "Per Diem" Seller Employees will be offered extra-help employment in accordance with Purchaser's standard hiring practices as referenced above. For any Hired Employees who are permanently employed by Purchaser, Purchaser will provide benefits and terms and conditions of employment generally consistent with those offered to other Purchaser employees in the same or substantially similar Purchaser classifications. Whether a classification is "substantially similar" to a Purchaser classification shall be determined in Purchaser's sole and absolute discretion.

APA at § 5.3.1 (with § 5.3 as the "Provisional Hiring Clause"). The Provisional Hiring Clause is

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subject in all respects to any other terms and conditions of the APA.

a. The Post-APA Marketing Process and the Lack of Additional Bids

21. Pursuant to the requirement of the Bidding Procedures Order, the Debtors continued their prepetition effort to sell the Assets (the "Marketing Process"). As a part of this process, and as further detailed in the Moloney Declarations, Cain Brothers, the Debtors' investment banker ("Cain"), continued to actively market the Assets. Cain vigilantly monitored interest and continued to communicate with potential partial or aggregate bidders. For instance, Cain sent a direct email communication to more than 170 interested buyers Cain had identified and over 600 individual email addresses. This communication contained key information about the Assets, the auction, the Bidding Deadline and other deadlines, a hyperlink to access the Bidding Procedures Order and contact information for a Cain individual to discuss questions and further interest. Cain's Marketing Process was meant to identify and shepherd any potential bidders who could contribute to a competitive auction on top of the Stalking Horse Bid.

22. The Debtors expressed their preference to potential bidders during the Marketing Process for a buyer to assume the CLVNA CBA in whole or in part. *Declaration of Richard G. Adcock in Support of Debtors' § 1113 Motions* at ¶ 7. However, during the Marketing Process, no party or Potential Bidder (as defined in the Bidding Procedures Order) expressed interest in assuming in whole or in part, the CLVNA CBA. Moloney Declaration at ¶ 13.

23. No other party emerged willing to place a bid for the Assets, whether partial or aggregate, under the Bidding Procedures Order. *See Notice That No Auction Shall Be Held* [Docket No. 1005]. The Debtors then identified SCC as the winning bidder. Therefore, the Court considered the Debtors' request to approve the APA at the Sale Hearing, and, subsequently entered the Sale Order [Docket No. 1153].

b. SCC's Condition of Not Taking An Assignment of CBAs

24. The Bidding Procedures Order required the Debtors to file and serve a cure notice upon each counterparty to an Assumed Executory Contracts (as defined in the Cure Notice, at 29, of the Bidding Procedures Order) and provided certain related assumption and assignment

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procedures thereto. Bidding Procedures Order, at 9-12. The Bidding Procedures Order also (i) allowed the successful bidder to exclude or to add certain contracts or leases to the initial list of Assumed Executory Contracts, as set forth therein, and (ii) provided that the successful bidder would be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under § 365(b) in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the successful bidder(s) from performance of any and all of its obligations pursuant to the successful bidder's purchase agreement. Bidding Procedures Order at ¶ 26.

25. Under the Court approved APA, Labor Obligations (as defined therein), including the CLVNA CBA, are an excluded liability from the Sale. See APA ¶ 8.13. SCC, in fact, cannot legally assume the CLVNA CBA or be parties to CBAs under California law, because SCC employees are already represented by recognized employee organizations with memoranda of understanding/agreement addressing bargaining issues.[7]

26. Although SCC will not take an assignment of the CLVNA CBA, SCC employees are permitted to join the SCC union representing their respective classifications. Under the Provisional Hiring Clause, SCC intends to consider for employment the CLVNA Represented Employees that currently staff the Hospitals and understands the value of employees with institutional knowledge and the value of the Debtors' employees. All employees previously covered under the CLVNA CBA that are hired by SCC may join the SCC union representing their respective classification.[8]

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[7] Under California law, when county or city employees are represented by a union, the agency must negotiate with that union regarding their pay and benefits, working hours, and working conditions. California Government Code 3500, known as the Meyers-Milias-Brown Act, (MMB) requires negotiation in good faith with the recognized employee representative on specified subjects. It also permits local agencies to adopt their own rules and regulations for the governance of labor relations. For California local agencies, the public agency employer determines the appropriate bargaining units within the agency. *Covina-Azusa Fire Fighters Union, Local 2415 v. City of Azusa*, 81 Cal. App. 3d 48, 59 (1978). The agency typically has an employer-employee relations ordinance or resolution that describes the procedures to determine bargaining units, to resolve disputes over bargaining unit formation and to establish bargaining unit representation. The public agency typically creates these procedures after consulting in good faith with the representatives of a recognized employee organization. Cal. Gov't Code § 3507.

[8] The relief that the Debtors seek in this Motion is contingent and conditioned on the Sale closing, which is expected to occur on or about February 28, 2019.

E. THE § 1113 MEETING AND PROPOSAL

27. On December 5, 2018, the bidding deadline passed with no alternative bidders. On December 7, 2018 the Debtors spoke with James Voelzow, an authorized representative of CLVNA, and delivered the requisite proposal under § 1113 to reject and terminate the terms of the CLVNA CBA (the "Proposal"). The telephonic meeting was shortly followed up with a letter memorializing the Proposal (**Exhibit 2**).

28. The Debtors were represented at the December 7, 2018 telephone meeting by Richard Adcock, CEO of VHS and Steven Sharrer, Chief Human Resources Officer of VHS. After discussing the Bankruptcy Case and Sale process generally, the Debtors presented their Proposal and represented that:

- The Debtors would seek approval of the sale of the Hospitals to SCC because no other qualified bidder had emerged (and, among other things, that no other potential bidder had indicated interest in assuming the CLVNA CBA).
- SCC will not assume the CLVNA CBA. Notwithstanding non-acceptance of the CLVNA CBA, the allocation of job descriptions and classifications have already been made (under Local Ordinance A-25 of Santa Clara County), and substantially all current OCH and SLRH employees in good standing would be represented by a SCC union, which are allocated to their applicable job classifications.[9]
- The Debtors would be filing a motion to obtain authority to reject and terminate the CLVNA CBA because the Debtors would no longer be operating the Hospitals after the Closing.
- The Debtors intended to honor and maintain the CLVNA CBA until Closing.
- SCC would prospectively hire CLVNA Represented Employees subject to the Provisional Hiring Clause who were interested in working for SCC after the Closing, and these hired employees would be represented by a SCC Union, which has been allocated for the relevant job classifications.

[9] Based upon information and belief, SCC and the unions whose employees work at the Hospitals are already in discussions about this process.

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- The Debtors were available to discuss questions about the Proposal or other relevant issues.

29. The Debtors will respond to additional communications from the union and any counterproposal should one be delivered.

IV. ARGUMENT

A. SECTION 1113'S APPLICABILITY AND STANDARDS

"Section 1113 of the Bankruptcy Code gives a bankruptcy court the authority to modify or reject a collective bargaining agreement if the debtor follows certain steps prescribed by the statute." *In re Karykeion, Inc.,* 435 B.R. 663, 673 (Bankr. C.D. Cal. 2010). Courts recognize that § 1113 is a complex statute and that "[p]assage of § 1113 was not accompanied by a committee report, and there is no dependable legislative history." *In re Hoffman Bros. Packing Co., Inc.*, 173 B.R. 177, 182 (B.A.P. 9th Cir. 1994). Therefore, "[b]ankruptcy cases generally approach this complicated statute by breaking the statute into a nine part test [because] th[is] nine step analysis [is] an effective way to approach this multipart statute and [its] requirements." *In re Karykeion, Inc.*, 435 B.R. at 677 (citing *In re Family Snacks, Inc.*, 257 B.R. 884, 892 (B.A.P. 8th Cir. 2001)).

The nine factors are: (1) the debtors make a proposal; (2) the proposal be based on the most complete and reliable information available at the time of the proposal; (3) the proposed modifications or rejection are necessary to permit reorganization of the debtor; (4) the modifications assure that all creditors, the debtors, and all other affected parties are treated fairly and equitably; (5) the debtors provide the union relevant information as is necessary to evaluate the proposal; (6) the debtors meet at reasonable times with the union between the time of the proposal and the time of the hearing; (7) the debtors negotiate with the union in good faith at these meetings; (8) the union refuses to accept the debtors' proposal without good cause; and (9) the balance of equities clearly favors rejection or modification of the agreement. *Id.*

Although the Debtors do not dispute that § 1113 applies in these cases, courts have recognized that the provisions of § 1113 are ill-suited to a case like this case, where the Debtors are liquidating their assets under chapter 11. *In re Chicago Constr. Specialties, Inc.* 510 B.R.

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205, 215 (Bankr. N.D. Ill. 2014) (*quoting In re Rufener Contr., Inc.*, 53 F.3d 1064, 1067 (9th Cir. 1995)). And, as noted in the thoughtful analysis in *Chicago Constr.*, *supra*, the Court "must not just consider the tests that have developed in the case law for reorganizing cases. The court must also determine how, if any, those tests should be treated differently in a liquidating case." *Id.* at 216. There is no doubt that the Debtors are liquidating their assets. Although they have not ceased operations, or filed a liquidating plan, their actions and statements make clear that they are, in fact, liquidating. First-Day Declaration at 25, ¶ 96; *Chicago Constr.*, 510 B.R. at 217 (discussing why rejection of CBAs, even, in liquidation, are important, including to avoid administrative expenses which can dilute creditors' recoveries and even make confirmation of a plan impossible).

B. THE DEBTORS HAVE SATISFIED § 1113'S REQUIREMENTS

a. The Debtors have made a proposal to CLVNA.

The Debtors have made a proposal to institute the rejection of the CLVNA CBA, both orally and in writing as evidenced by the letter of December 11, 2018. As such, the Proposal is more than adequate to meet this requirement. *See In re Alpha Nat. Res., Inc.*, 552 B.R. 314, 331 (Bankr. E.D. Va. 2016) ("[T]he bar for satisfying this requirement [of the making of a proposal] is low because in most cases, this factor is a 'routine formality.'") (citations omitted); *Chicago Constr.*, 510 B.R. at 217 ("The Notice clearly provides that the Debtor proposed to modify the CBA by rejecting it. Nothing further is needed or appropriate with respect to the first test."); *In re Allied Delivery Sys. Co.*, 49 B.R. 700, 700–01 (Bankr. N.D. Ohio 1985) (letter sent by debtor to union seeking relief from CBA was "proposal" under § 1113); *Matter of K & B Mounting, Inc.*, 50 B.R. 460, 461 (Bankr. N.D. Ind. 1985) ("The [§ 1113] proposal was made by letter to [the] business representative of Teamsters Local Union No. 299 [from the debtor's attorney]").

b. The Proposal was based on the most complete and reliable information available.

To satisfy this factor, "the debtor is simply required to gather the most complete information available at the time and to base its proposal on the information it considers reliable. This requirement by definition excludes hopeful wishes, mere possibilities and speculation." *In*

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re Karykeion, 435 B.R. at 678. "Nonetheless, in order to meet the procedural requirements of section 1113(b)(1)(A), 'a debtor can only be required to provide information that is within the debtor's power to provide.'" *Chicago Constr*., 510 B.R. at 219 (*quoting In re Pinnacle Airlines Corp.,* 483 B.R. 381, 411 (Bankr. S.D.N.Y. 2012)).

Here, the Debtors have made the Proposal because they are liquidating their assets, have determined they cannot operate the Hospitals and the Marketing Process demonstrated that SCC is the only willing buyer and it will not assume the CLVNA CBA. The Proposal was based on current, complete and reliable information because the Proposal was made shortly after the Bidding Deadline when SCC became the Successful Bidder. As this information was promptly shared with CLVNA (and the APA is in the public record and was served upon CLVNA), this prong is satisfied. *Chicago Constr.,* 510 B.R. at 219 ("Under the circumstances of this case, it is not difficult to conclude that the Debtor based its choice on the most complete and reliable information available at the time of the proposal.").

c. <u>The Proposal is necessary to permit the successful reorganization of the Debtors</u>.

The Debtors may utilize § 1113 to liquidate their going concern businesses and, as such, the proposed rejection and termination of the CLVNA CBA is necessary to both the sale and the reorganization process. *Chicago Constr*., 510 B.R. at 221 ("the court finds that 'necessary to an effective reorganization' means, in the context of a liquidation, necessary to the Debtor's liquidation."). The Ninth Circuit BAP has found,

> [T]he distinction between reorganization of a debtor and the sale of a going concern asset to a third party [is] irrelevant to considerations under § 1113, based on Chapter 11's goal of continuing the enterprise, regardless of the ownership [and] § 1113 does not preclude rejection of CBAs where the purpose or plan of the debtor is to liquidate by a going concern sale of the business.

In re Hoffman Bros. Packing Co., Inc., 173 B.R. at 186–87 (citing *In re Maxwell Newspapers, Inc.*, 149 B.R. 334 (S.D.N.Y.1992)); *see also In re Family Snacks, Inc.*, 257 B.R. at 897 ("[as] it is appropriate to permit rejection in the context of a § 363 asset sale when the debtor will no

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longer be in business, as the cases uniformly hold and the union appears to concede, it ought not matter when the decision on rejection is made").

"[C]ourts have found that this 'necessary' factor has been satisfied when a debtor has proven that modification or rejection is 'necessary' to achieve a sale under § 363" when a debtor "lacks the liquidity necessary to complete a stand-alone reorganization." *In re Alpha Nat. Res., Inc.*, 552 B.R. at 333; *In re Nat'l Forge Co.*, 289 B.R. 803, 810–11 (Bankr. W.D. Pa. 2003).

Here, the Debtors have sustained losses that "amount to approximately $175 million annually on a cash flow basis" (First Day Declaration, at 24-25, ¶ 95), and, thus, lack the means to emerge from these cases under a "stand-alone reorganization" model and must either sell or close the Hospitals. Given these two choices, the Debtors' desired approach has been to sell these Hospitals, as well as the Debtors' remaining facilities. On the Petition Date, the Debtors' CEO testified:

> [T]he Debtors have commenced these chapter 11 cases to protect the original legacy of the Daughters of Charity to the maximum extent possible by retiring debt incurred over the past 18 years and freeing the hospital facilities and work force to continue to operate as hospitals under new ownership and leadership without the accumulated crisis of the past. ***To do that requires the bankruptcy court supervised sale of some or all of the hospitals and related facilities***, and the comprehensive resolution of the Debtors financial obligations through a court approved plan of reorganization.

First-Day Declaration at 25, ¶ 95 (emphasis added).

The Debtors preferred to sell their Hospitals with the CLVNA CBA in place and explicitly expressed this preference to all potential buyers. However, neither SCC nor any other party expressed a willingness to assume the CLVNA CBA, in whole or in part. Under the situation here—with no bidder willing to assume the CLVNA CBA, and the Debtors unable to reorganize the Hospitals themselves—this factor is satisfied because the Debtors must reject the CLVNA CBA to effectuate a going-concern sale. *In re Walter Energy, Inc.*, 542 B.R. at 893-94 (Bankr. N.D. Ala. 2015)[10] ("The evidence establishes that the [businesses could not] be sold without

[10] (aff'd sub nom. *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631 (N.D. Ala. 2016) and aff'd sub nom. *United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603 (N.D. Ala. 2016)).

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rejection of the [collective bargaining agreement]. Thus, absent the rejection, those operations would be closed and sold on a piecemeal basis. On the other hand, if the sale(s) consummate and the [businesses] are sold as a going-concern, Debtors' employees have the best chance of future employment."); *In re Nat'l Forge Co.*, 289 B.R. at 810–11 ("No buyer was willing to assume the CBA. Potential ongoing disputes over the CBA threatened to chill the bidding in the absence of rejection. The proposed modification in the form of rejection of the CBA is necessary to permit reorganization of the Debtor.").

Rejection is necessary *now* and not, for instance, after a plan confirmation, because, after the Sale closes, the Debtors will have no need for the CLVNA CBA, and this CBA may expose the Debtors to liability and expenses without the Debtors receiving consideration in return. *See Chicago Constr.* 510 B.R. at 217-18 ("The Debtor seeks to reject that agreement in the course of its liquidation. Why? Because, as with any unrejected contract, post-petition obligations thereunder may result in administrative claims against the estate. Waiting to reject as a part of a confirmed plan, when such plan confirmation process may be protracted and the intermediate period results in accrual of administrative obligations, would not be in the best interest of the Debtors' estate as a whole. Given the foregoing, the Debtors' choice to seek rejection in advance of a plan is understandable.") (citations omitted).

d. <u>The Debtors have provided CLVNA with relevant information necessary to evaluate the Proposal</u>.

"The test merely requires that the debtor provide the counterparty with 'such relevant information as is necessary to evaluate the proposal.'" *Chicago Constr*., 510 B.R. at 220. In a similar factual situation the Bankruptcy Court for the Northern District of Alabama found that:

> [R]equired "relevant information" was simple and apparent for all to see: the Debtors could not survive absent a sale in the near term, the Proposed Buyer had emerged as the only viable bidder that would purchase the [business] as a going-concern, the sale of the [business] as a going-concern provides the best chance for future employment of the Debtors' employees, and the Stalking Horse APA requires . . . rejection of the. . . CBA.

In re Walter Energy, Inc., 542 B.R. at 886-87. Likewise, also under another similar fact pattern, the Bankruptcy Court for the Western District of Pennsylvania found that this factor was satisfied

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where: "The Debtor provided the Union with the APA, Debtor's Sale Motion and its liquidating Plan and Disclosure Statement. Debtor's financial advisor met with the Union the day after the APA was signed and provided the Union up-to-date information, a realistic time line, and reasonable prediction regarding the outcome of the case." *In re Nat'l Forge Co.*, 289 B.R. at 810. Such is the case here because the Debtors have provided CLVNA with key information and documents (the APA, the Sale information, the redline, etc.) informing CLVNA of the Debtors' Proposal and the basis thereof.

Further, the Court should consider information the Debtors have publicly filed as "provided" to the union, including, information the Debtors presented of their "dire financial condition" in court filings, including but not limited to the Debtors' Schedules, SOFAs, the First-Day Declaration (which detailed the reasons for and current state of the Debtors' financial distress) and the Bidding Procedures Motion. [Docket Nos. 8, 365, 513, 514]; *Chicago Constr.*, 510 B.R. at 220 ("Further, the case law in this arena confirms that nothing requires the information provided to be provided in the proposal itself."); *In re Karykeion, Inc.*, 435 B.R. at 680–81 ("The debtor presented this evidence [of its financial condition] in support of its disclosure statement, motions to modify cash collateral orders, and other proceedings before this court.").

Finally, although certain unions argued in their opposition to the sale of the assets to SCC that the Debtors waited too long to engage in negotiations, they were well aware of the requirements of the APA, that SCC was not going to assume the CLVNA CBA and, yet, never sought additional information or negotiations with the Debtors or SCC over the terms of the APA. *Chicago Constr.*, 510 B.R. at 220 ("Had the Respondents engaged with the Debtor, they might have been offered or been able otherwise to obtain additional information . . . Had the Respondents wanted additional information, they could have requested it. Instead, the Respondents chose not to engage with the Debtor . . . By failing to engage the Debtor and failing to advance a theory under which the Debtor's disclosures are inadequate, the Respondents have failed to show that the fifth factor has not been met. The court therefore concludes that it has been satisfied.").

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e. <u>The Proposal treats all creditors, the debtor, and all of the affected parties fairly and equitably</u>.

In a sale context, this factor does not require that parties are paid in full or that all employees are re-hired or re-represented. Rather, the Court considers whether "affected parties" are treated fairly under the Code, and that the debtor does not place a "disproportionate burden" on represented employees. *In re Nat'l Forge Co.*, 289 B.R. at 811. "[A]ffected parties [under § 1113] . . . include those who have intangible interests, such as [a] city, [a] state, vendors who supply the [debtors' businesses], and most importantly, the employees who depend on the going concern sale as the best chance for future employment." *In re Walter Energy, Inc.*, 542 B.R. at 892–93.

Here, there is no disproportionate burden placed on CLVNA Represented Employees compared to other Hospital employees or other affected parties. The Debtors place special value on their CLVNA Represented Employees, and the Debtors' CEO, principals, and their counsel met with the CLVNA shortly after the Bid Deadline passed. The APA includes the Provisional Hiring Clause for SCC to provisionally employ as of the Closing substantially all CLVNA Represented Employees as of the Closing Date. Under this process, SCC will consider for employment CLVNA Represented Employees who, if hired, may become members of the union respecting their respective classification. Further, the Debtors propose to honor the CLVNA CBA in full, up and until the Closing.

Additionally, because this is a liquidation of the Hospitals, CLVNA Represented Employees and CLVNA may assert claims for damages on a fair and equal basis as other creditors under the Code. *See In re Chicago Constr. Specialties, Inc.*, 510 B.R. at 222 ("[T]he Debtor's proposal to reject the CBA simply treats CBA claims on par with claims of other creditors, in the same manner those claims would be treated in a chapter 7. The [union's] arguments, on the other hand, would impermissibly and inequitably elevate those claims.").[11] Further, to the extent that Hospital employees continue to work for the Hospitals through Closing,

[11] The Debtors take no position on the ultimate recovery or rights of CLVNA or CLVNA Represented Employees to these claims under the Code.

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they will receive their compensation and existing benefits in the ordinary course as administrative expenses.

Also, it bears mentioning that the focus in this factor is on the *represented employees* themselves, not the fate of any individual union. Where, as here, the evidence establishes that it is likely that some of the employees "may be employed by the successful buyer" this supports a finding of fair treatment to employees (especially where these employees will be able to be represented by the SCC union that represents their respective classifications). *In re Nat'l Forge Co.*, 289 B.R. 803 at 808–09; *see also In re Walter Energy, Inc.*, 542 B.R. at 867 ("The record . . . indicate[s] the proposed going concern sale is the best chance for selling the [businesses] and to provide potential future employment for the Debtors' represented employees."). Here, the Sale is the best possible option for the CLVNA Represented Employees, the Hospitals, and the communities they serve—and the Sale will only occur through the proposed rejection and termination of the CLVNA CBA.

f. <u>The Debtors have and will meet at reasonable times with CLVNA up and until the hearing on this Motion</u>.

As demonstrated, the Debtors have already met with CLVNA in good faith, and offered to meet with them again as reasonably requested. It should be also noted that "§ 1113 [does not] require completion of negotiations before filing the motion." *In re Walter Energy, Inc.*, 542 B.R. at 884. Additionally, the Proposal invited further discussion between CLVNA and the Debtors. *Id.* at 885.

g. <u>The Debtors conferred in good faith</u>.

As demonstrated, the Debtors have conferred with CLVNA in good faith and will continue to do so up to the hearing on this Motion as reasonably necessary. As such, this factor is met and CLVNA has no contrary evidence (and CLVNA carries the burden to show a lack of good faith given the Debtors' Proposal and willingness to meet). *In re Walter Energy, Inc.*, 542 B.R. at 894 (citing *In re Carey Transp., Inc.*, 50 B.R. 203, 211 (Bankr. S.D.N.Y. 1985) (quoting *In re Am. Provision Co.*, 44 B.R. 907, 910 (Bankr. D. Minn. 1984)), subsequently aff'd sub nom. *Truck Drivers Local 807, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of*

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Am. v. Carey Transp. Inc., 816 F.2d 82 (2d Cir. 1987). "A failure to reach agreement may be the result of the difficultness of the task, rather than the lack of 'good faith' of either party." *Id.*

Further, lack of good faith is not established because certain terms in a proposal—like the rejections here—are rendered non-negotiable by external factors (here, the Marketing Process revealing no buyers willing to take assignment of the CLVNA CBA and the Debtors' financial inability to do so either). *In re Walter Energy, Inc.*, 542 B.R. at 885 ("The fact that certain terms - like the rejection of [a CBA] - were non-negotiable for reasons beyond the Debtors' control does not render [a proposal] defective or proffered in bad faith."). This is because this inquiry focuses on the debtor's good faith, "not [a p]roposed [b]uyer's negotiation of [an] APA." *Id.* at 895.

Also, apart from actual meetings between the debtor and a union, a debtor acts in good faith when it "facilitates negotiations" between a potential buyer and a union and its employees. Here, the Debtors obtained the Provisional Hiring Clause for all CLVNA Represented Employees and also are willing to facilitate discussions between its valued employees and CLVNA partner and SCC. *In re Alpha Nat. Res., Inc.*, 552 B.R. at 335–36 (factor met where "[t]he Debtors have submitted proposals, responded to information requests, and were willing to meet with the union frequently throughout the negotiations.").

h. <u>CLVNA has no good cause to refuse the Debtors' Proposal</u>.

In the context of a sale where the only potential bidders would not assume the applicable CBA, "[a] [u]nion's insistence that [a] [d]ebtor provide something which was not within its control indicates that the Union's refusal to accept [a] proposal . . . without good cause." *In re Nat'l Forge Co.*, 289 B.R. at 812.[12]

Here, the results of the Marketing Process, with no third parties willing to assume the CLVNA CBA, and the Debtors' inability to operate the Hospitals outside of this case because of liquidity issues, are not within the Debtors' control. The only option is to reject and terminate the

[12] This factor does not concern any dispute that may exist between CLVNA and SCC (although the Debtors are not aware of any). *In re Karykeion, Inc.*, 435 B.R. at 683–84 ("This court specifically makes no ruling and has no jurisdiction over the dispute between the unions and [buyer]. The relevant inquiry for purposes of the § 1113 motion is the good faith of the debtor and the unions, and allegations related to [buyer's] practices are irrelevant.").

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CLVNA CBA to allow SCC to operate the Hospitals with employees represented by the SCC union regarding their respective classifications. Opposing this process would indicate a lack of good faith by the CLVNA.

i. The balance of the equities favors the Debtors' Proposal.

A distressed debtor "cannot base its rejection of its only suitor [to purchase a going-concern business] on a speculative white knight with greater riches." *In re Karykeion, Inc.*, 435 B.R. at 678. Here, SCC has made a good, fair offer for the Hospitals that will allow the Hospitals to remain open to continue their mission of providing high-quality patient care, offer payment to creditors, and offer provisional employment subject to the Provisional Hiring Clause to all CLVNA Represented Employees who would be represented by the applicable SCC Union. SCC will not and cannot assume the CLVNA CBA, and no other buyer expressed interest. Further, without the requested relief, the Debtors would remain bound to the CLVNA CBA, and the "only purpose of leaving [these obligations] in place would be to afford [the union] the opportunity for an augmented administrative claim rather than a general unsecured claim," which is impermissible because "§ 1113 may not be used to elevate a union's position at the cost of any distribution to any other creditor." *In re Chicago Constr. Specialties, Inc.*, 510 B.R. at 221.

The equities favor Closing the Sale, the Hospitals' future and the employment of the many workers who can join a SCC union. *See In re Nat'l Forge Co.*, 289 B.R. at 813 ("The balance of the equities in the instant matter demands rejection of the CBA . . . A sale at the highest possible price is clearly best for all concerned. Achievement of the highest possible price requires that the CBA be rejected.").

V. CONCLUSION

Based upon the foregoing, the Debtors respectfully request that the Court enter an order granting the relief requested herein, including (i) rejection and termination of all terms contained in the CLVNA CBA (**Exhibit 1**) effective upon Closing, and (ii) for such other and further relief as the Court may deem proper.

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Dated: January 2, 2019

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By */s/ Tania M. Moyron*
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December 11, 2018

Via Email (jvoelzow@gmail.com)

James Voelzow
California Licensed Vocational Nurses Association

Re: Proposal Regarding Disposition of CBA

Dear Mr. Voelzow:

Dentons is counsel to Verity Health System of California, Inc. ("Verity") and several affiliates, including O'Connor Hospital ("OCH, and collectively with Verity and its affiliates, the "Debtors"), in their bankruptcy cases currently pending in the United States Bankruptcy Court for the Central District of California (the "Court"), which commenced on August 31, 2018 (the "Petition Date").

I am writing to memorialize the proposal orally made to you on Friday, December 7, 2018, by Richard Adcock and Steve Sharrer, regarding the Collective Bargaining Agreement between OCH and California Licensed Vocational Nurses Association ("CLVNA"), which is effective November 12, 2016 through October 31, 2019 (the "Prepetition CBA"). We urge you to discuss this proposal with your legal counsel.

As we discussed, the proposal is that the Debtors will need to terminate the Prepetition CBA because they will no longer own or operate OCH and will shortly commence steps to do so by filing a motion in the Court to "reject" the CBAs pursuant to section 1113 of the Bankruptcy Code, 11 U.S.C. §101-1531, as amended (the "Proposal"). The necessity of the Proposal is supported by the following:

On October 1, 2018, the Debtors filed a *Motion for the Entry of (I) an 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*

EXHIBIT 1

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 (the "Sale Procedures Motion") [Dkt. No. 365]. Attached as Exhibit A to the Sale Procedures Motion was the proposed Asset Purchase Agreement ("APA") to sell OCH and Saint Louise Regional Hospital (collectively, the "Hospitals") to Santa Clara County (the "County"). A copy of the Sale Procedures Motion and APA was served on CLVNA at that time.

On October 31, 2018, the Court, after a notice and hearing, entered an Order approving the Sale Procedures Motion (the "Sale Procedures Order") [Dkt. No. 725], which approved the County as the "stalking horse" purchaser for certain assets and liabilities of OCH and SLRH as set forth in more detail in the APA.

The Sale Procedures Order established a deadline of December 5, 2018 (the "Bid Deadline") whereby interested parties who met certain criteria (each an "Alternative Qualified Bidder") could submit bids to purchase the assets and liabilities of OCH, SLRH or both Debtors (each an "Alternative Qualified Bid"). After the Debtors undertook a thorough marketing process to sell in whole or in part the Hospitals, no Alternative Qualified Bidder (or any other bidder) has presented an Alternative Qualified Bid (or any other bid) by the Bid Deadline, nor has any party requested additional time within which to submit such a bid. So, at this time, no party other than the County has expressed interest in acquiring and operating the Hospitals.

Due to the absence of an Alternative Qualified Bidder, the Debtors will seek final approval of the APA at a hearing before the Court on December 19, 2018. Under the APA, the County does not seek to be bound by the terms of, or obligations under, the Prepetition CBA.

Because the APA is for the sale of all operations of OCH and SLRH, after the Sale closes (which we expect to occur at late February or March 2019), the Debtors will no longer operate those Hospitals and, therefore, will have no further need for the Prepetition CBA, and, as the County will only acquire the Hospitals free from the Prepetition CBA, aver that rejection of them is necessary to permit reorganization of the Debtors because the only bidder in a thorough marketing and auction process will not assume the Prepetition CBA. Our hope is that we may proceed consensually with CLVNA with respect to the rejection process and in determining and settling CLVNA right to rejection relief. The Debtors, of course, remain open to receive and consider all comments, concerns and proposals from you.

Please note that the Debtors reserve the right to amend, add, delete or modify this proposal.

Should you or legal counsel desire further information to communicate about this proposal, please feel free to contact me directly.

Thank you.

Sincerely,

Sam J. Alberts