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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 Cases
Hon. Ernest M. Robles

**OBJECTION OF UNITED HEALTHCARE
INSURANCE COMPANY TO DEBTORS' MOTION
FOR ORDER APPROVING FORM OF ASSET
PURCHASE AGREEMENT FOR STALKING HORSE
BIDDER, ETC. [Dkt No. 1279]; DECLARATIONS OF
PAUL J. CIRILLO AND TRINA HONEA; EXHIBITS**

HEARING:

Date: April 17, 2019

Time: 10:00 a.m.

Place: Courtroom 1568

255 E. Temple Street, Los Angeles, CA 90012



1820151190412000000000014

1 UnitedHealthcare Insurance Company (collectively with its affiliates, subsidiaries,
2 and parents, “United”) hereby objects to the Debtors’ Motion for the Entry of (I) an Order
3 (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for
4 Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and
5 Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to Interested
6 Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest
7 Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory
8 Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free
9 and Clear of All Claims, Liens and Encumbrances [Docket No. 1279] (the “Sale Motion”).

10 United objects to the Sale Motion on two grounds. First, United objects to the
11 assumption and assignment of the Capitation Agreements (as defined below) to the Stalking
12 Horse Purchaser (as defined below) because it has not been provided with adequate
13 assurance that such bidder will be able to perform under those agreements. Second, United
14 objects to the extent the order approving the Sale Motion purports to sell the relevant
15 Debtors’ accounts receivable free and clear of United’s right of recoupment of overpayments
16 from such accounts receivable under the FPAs (as defined below).

17 In support of its objection, United relies on the Declaration of Paul Cirillo (the
18 “Cirillo Decl.”) and the Declaration of Trina Honea (the “Honea Decl.”), and further states
19 as follows:

20 **I. BACKGROUND**

21 1. United provides health care insurance benefits to members insured under its
22 fully insured group medical plans and Medicare Advantage plans through a network of
23 providers that contract with United to render medical services to members. United also
24 administers self-insured health plans of third parties, by which the members of those self-
25 insured plans may also access medical care through United’s network of providers.

26 2. As set forth in detail below, United is a party to various contracts with St.
27 Francis Medical Center (“St. Francis”), St. Vincent Medical Center (“St. Vincent”), and
28

Seton Medical Center (“Seton” and together with St. Francis and St. Vincent, the “Debtors”), by which these Debtors are in network providers to United’s members.

A. Capitation Agreements

3. United and St. Vincent are parties to that certain PacifiCare of California Hospital Services Agreement (Split Capitation) effective January 1, 2002, as amended from time to time (the “St. Vincent Capitation Agreement”). (*See* Honea Decl. ¶ 4.)

4. United and St. Francis are parties to that certain PacifiCare of California Hospital Services Agreement (Split Capitation) effective January 1, 2002, as amended from time to time (the “St. Francis Capitation Agreement,” and together with the St. Vincent Capitation Agreement, the “Capitation Agreements”).¹ (*Id.* ¶ 5.)

5. Under the Capitation Agreements, United pays St. Vincent and St. Francis a per member, per month capitation fee. In exchange for this fixed fee, St. Vincent and St. Francis provide two core functions. (*Id.* ¶ 6.)

6. First, St. Vincent and St. Francis provide and arrange for certain hospital services for United’s members insured under health maintenance organization health plans (the “HMO Members”) who are assigned to a primary care physician employed or contracted with the medical group identified in the Capitation Agreements (the “Medical Group”). (*Id.* ¶ 7.) The Capitation Agreements contain a division of financial responsibility (“DOFR”) among United, the Medical Group, and St. Vincent or St. Francis (as the case may be) for the covered services rendered to United’s members that specifies which party is responsible for the cost of rendering such services. (*Id.*) St. Vincent and St. Francis provide the hospital services to the HMO Members themselves or through other contracted or non-contracted providers. (*Id.*)

¹ The Capitation Agreements contain United’s highly confidential and sensitive commercial information, and, therefore, the parties agreed to keep the terms of the Capitation Agreements confidential. The Debtors should have copies of the Capitation Agreements. Other parties in interest may request copies of such Capitation Agreements by written request to the undersigned counsel and upon the entry into either an acceptable confidentiality agreement or the entry of an appropriate protective order. If requested by the Court, United will provide the Capitation Agreements to it for *in camera* review.

1 7. Thus, under the Capitation Agreements, St. Vincent and St. Francis bear the
2 financial risk to pay for all costs associated with the hospital services for the HMO Members
3 that are their financial responsibility under the DOFR. (*Id.* ¶ 8.) Given St. Vincent and St.
4 Francis’s financial exposure under the Capitation Agreements, they are required to provide
5 financial information to United to establish their solvency, including financial statements,
6 IBNR (incurred but not reported claims) reserves, and a process for expense reduction. (*Id.*)
7 Indeed, a capitated provider’s insolvency is grounds for termination of the Capitation
8 Agreements. (*Id.*)

9 8. Second, under the Capitation Agreements, United has delegated to St. Vincent
10 and St. Francis functions relating to claims processing and payment, as well as reporting
11 related to the HMO Members medical care (collectively, the “Delegated Functions”). (*Id.* ¶
12 9.) With regard to the claims processing and payment function, St. Francis and St. Vincent
13 are required to comply with all current Centers for Medicare and Medicaid Services
14 (“CMS”) regulations and guidelines, state regulations and guidelines, and United’s
15 guidelines for processing and paying claims for services rendered to HMO members that are
16 their financial responsibility. (*Id.*) This function includes, but is not limited to, processing
17 and paying claims submitted by contracted and non-contracted providers; handling provider
18 disputes; issuing denials; corresponding with HMO members; and issuing checks, remittance
19 advices, and tax forms. (*Id.*)

20 9. In addition, St. Francis and St. Vincent are required to submit to United
21 monthly encounter data (i.e., data on HMO Members’ utilization of medical services)
22 consistent with the terms of and in the format specified by the Capitation Agreements,
23 United’s guidelines, and CMS’s requirements. (*Id.* ¶ 10.)

24 10. In light of the crucial role that St. Vincent and St. Francis play in providing and
25 paying for the health care services to the HMO Members, United has a robust set of due
26 diligence items that it reviews before approving a new capitated provider. (*Id.* ¶ 11.) In
27 particular, United requires a set of financial information to establish the provider’s solvency
28 and financial ability to bear the risk of paying for its share of the HMO Members covered

1 services (the “Financial Diligence”). (*Id.*) These due diligence items are attached hereto as
2 Exhibit A. (*Id.*)

3 11. With regard to a prospective provider’s ability to perform the Delegated
4 Functions, United also has a robust due diligence process, which includes the prospect’s
5 submission of an operational review questionnaire and organizational chart, and a multi-day
6 on site inspection. (*Id.* ¶ 12.) In the inspection, United focuses on the prospect’s ability to
7 perform the delegated claim processing and payment, as well as reporting functions. (*Id.*) In
8 most cases, the prospective provider engages a third party management services organization
9 (“MSO”) to perform the Delegated Functions. (*Id.*) Thus, United reviews both the
10 prospective provider and, if applicable, the MSO to determine if, combined, the prospective
11 provider is initially able to perform the Delegated Functions. (*Id.*) The inspection’s detailed
12 areas of inquiry are listed in Exhibit B attached hereto. (*Id.*) The foregoing diligence
13 requirements, including the areas of inspection listed on Exhibit B shall be referred to herein
14 as the “Delegation Diligence.”

15 **B. Facility Participation Agreements**

16 12. United and St. Francis are parties to a Facility Participation Agreement with an
17 effective date of April 1, 2007, which has been amended from time to time (the “St. Francis
18 FPA”). (*See* Cirillo Decl. ¶ 4.)

19 13. United and St. Vincent are parties to a Facility Participation Agreement with
20 an effective date of April 1, 2007, which has been amended from time to time (the “St.
21 Vincent FPA”). (*Id.* ¶ 5.)

22 14. United and Seton are parties to a Facility Participation Agreement with an
23 effective date of April 1, 2007, which has been amended from time to time (the “Seton FPA”
24 and together with the St. Francis FPA and St. Vincent FPA, the “FPAs”).² (*Id.* ¶ 6.)

25
26
27 ² The FPAs contain United’s highly confidential and sensitive commercial information. While the
28 Debtors should have copies of the FPAs, other parties in interest may request copies of such FPAs
by written request to the undersigned counsel and upon the entry into either an acceptable
confidentiality agreement or the entry of an appropriate protective order. If requested by the Court,
United will provide the FPAs to it for *in camera* review.

1 15. Pursuant to the FPAs, the Debtors agreed to provide certain covered hospital
2 services to United's members insured under health care benefit plans, in exchange for certain
3 fees. In connection with paying claims submitted by the Debtors under the FPAs, United
4 will periodically overpay a claim for a variety of reasons. (*Id.* ¶ 7.)

5 16. Section 6.10 of the FPAs provides, in pertinent part, that if United believes that
6 a claim has not been paid correctly, or that funds were paid beyond or outside of what is
7 provided for under those agreements, United "may seek correction of the payment by giving
8 the [the Debtors] notice, within 12 months after the payment was initially made, that it
9 believes the payment was made incorrectly."³ (*Id.* ¶ 8.) The Debtors are required to repay
10 overpayments within 45 days of notice of the overpayment, and if they do not, United may
11 recoup the overpayments from future payments under the FPA. (*Id.*)

12 17. United is owed overpayments on both a pre- and post-petition basis under the
13 FPAs as set forth below. (*Id.* ¶ 9.)

Contract	Pre-Petition Overpayments ⁴	Post-Petition Overpayments (as of March 13, 2019)
Seton FPA	\$181,170.82	\$85,474.47
St. Francis FPA	\$174,609.25	\$16,905.80
St. Vincent FPA	\$659,258.00	\$5,066.49

22 (*Id.*)

23 C. Bankruptcy Filing

24 18. On August 31, 2018 (the "Petition Date"), the Debtors filed voluntary petitions
25 in this Court under Chapter 11.

27 ³ The twelve-month time limitation does not apply to overpayments resulting from the Debtors'
28 fraud and abuse, or if United's ability to discover the overpayment during the twelve-month period
was hindered by the Debtors' failure to provide full and timely cooperation with an audit by United.

⁴ Proofs of claim have been timely filed for these amounts. *See* Claim Nos. 3725, 3728, and 3736.

1 19. On January 17, 2019, the Debtors filed the Sale Motion by which they seek to
2 sell substantially all of the assets of St. Francis, St. Vincent, and Seton free and clear of all
3 liens, claims, and interests under 11 U.S.C. § 363(f). Among the assets being sold is the
4 Debtors' accounts receivable. (Sale Motion, p. 25; Sale Motion Ex. A § 1.7(k).)⁵

5 20. On February 19, 2019, the Court entered the Order (1) Approving Form Of
6 Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2)
7 Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections,
8 (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A
9 Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5)
10 Approving Procedures Related To The Assumption Of Certain Executory Contracts And
11 Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear
12 Of All Claims, Liens And Encumbrances; Memorandum of Points and Authorities In
13 Support Thereof [Docket No. 1572] (the "Bidding Procedures Order").

14 21. The Bidding Procedures Order approved Strategic Global Management, Inc.
15 (or an affiliated to be designated) as the Stalking Horse Purchaser. (Bidding Procedures
16 Order ¶ 10.)

17 22. On March 5, 2019, the Debtors filed the Notice to Counterparties to Executory
18 Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned
19 [Docket No. 1704], which identifies contracts that could potentially be assumed and assigned
20 pursuant to the Bidding Procedures Order (the "Potential Assumed Contracts").

21 23. The Debtors listed the FPAs among the Potential Assumed Contracts.

22 24. On March 18, 2019, the Debtors filed the Supplemental Notice re Notice to
23 Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be

24 ⁵ Section 1.7 of the APA states "Accounts Receivable" includes all accounts or other amounts
25 receivable "arising from the rendering of services or provision of goods, products or supplies to
26 inpatients and outpatients at the Hospital of such Seller, billed and unbilled, recorded and
27 unrecorded, for services, goods, products and supplies provided by such Seller prior to the Effective
28 Time whether payable by Medicare, Medicaid, or any other payor (including an insurance company),
or any health care provider or network (such as a health maintenance organization, preferred
provider organization or any other managed care program) or any fiscal intermediary of the
foregoing, private pay patients, private insurance or by any other source" (Sale Motion Ex. A
§ 1.7.)

1 Assumed and Assigned [Docket No. 1836], which identified the Capitation Agreements as
2 Potential Assumed Contracts.

3 25. On April 4, 2019, the Debtors filed a Notice That No Auction Shall Be Held
4 [Docket No. 2053], pursuant to which they stated that the Stalking Horse Purchaser is the
5 prevailing bidder and that no auction will be held.

6 26. To date, the Stalking Horse Purchaser has not provided evidence to United of
7 its ability to perform under the Capitation Agreements.

8 **II. OBJECTION**

9 27. United hereby submits this objection to the Sale Motion on two grounds. First,
10 the Debtors have not provided United with adequate assurance that the Stalking Horse
11 Purchaser can perform under the Capitation Agreements in the future. Second, to the extent
12 the Debtors seek to sell the Debtors' accounts receivable free and clear of United's right to
13 recoup overpayments from accounts receivable under the FPAs, such relief should be denied.

14 **A. The Debtors Have Not Provided United with Adequate Assurance That** 15 **the Stalking Horse Purchaser Can Perform Material Terms of Capitation** 16 **Agreements**

17 28. Section 365(f) of the Bankruptcy Code provides that a trustee may assign an
18 executory contract, provided that the trustee assumes the contract and that adequate
19 assurance of future performance by the assignee is provided, whether or not the contract is in
20 default. *See* 11 U.S.C. § 365(f)(2)(B). Such adequate assurance of future performance is
21 appropriate "in light of section 365(k), which provides that assignment relieves the trustee
22 and the estate from any liability for breaches occurring after assignment." 3 *Collier on*
23 *Bankruptcy* ¶ 365.09[1] (Richard Levin & Henry J. Sommer eds., 16th ed. 2018).

24 29. "The assignee need not provide adequate assurance of all details of the contract
25 or lease, only of material and economically significant contract terms. A contract term is
26 material if it was integral to the bargained-for exchange and is economically significant if
27 performance is required to give the contract counterparty the full benefit of the bargain." *Id.*
28 at ¶ 365.09[2]; *see In re Fleming Cos.*, 499 F.3d 300, 304-08 (3d Cir. 2007) (denying

1 assignment of grocery supply contract because essential term of contract, supply from
2 specified location, could not be fulfilled by potential assignee).

3 30. A court will look at several factors in determining adequate assurance of future
4 performance: “the financial ability to perform the contract; the general economic climate; the
5 existence of a guarantee; the reputation of the party seeking to assume responsibility for the
6 contract; and past dealings between the parties.” *In re Res. Tech. Corp.*, 624 F.3d 376, 383
7 (7th Cir. 2010) (citations omitted). In *Resource Technology*, the court explained that, as used
8 in § 365(f)(2)(B), “‘adequate’ is a term of art and simply means assurances that are
9 commercially reasonable under the particular circumstances of the case. This is a
10 commonsense, case-specific inquiry, and § 365(f)(2)(B) is given a practical, pragmatic
11 construction.” *Id.* (citation omitted; quotation marks omitted.)

12 31. The Debtors have failed to provide United with any evidence of the Stalking
13 Horse Purchaser’s ability to perform the under the Capitation Agreements. Regardless of
14 United’s direct agreements with the Stalking Horse Purchaser’s affiliate in another
15 geographical market, United has not been provided with any financial information that the
16 Stalking Horse Purchaser has the financial wherewithal to bear the additional capitated risk
17 under the Capitation Agreements with regard to these facilities. Further, United has not been
18 provided with any operational or other information to establish that the Stalking Horse
19 Purchaser can perform the additional core Designated Functions with regard to these
20 facilities relating to claims processing and payment, and medical data reporting. The
21 financial wherewithal to bear the capitated risk and the Delegated Functions are integral
22 terms of the Capitation Agreements. Thus, the failure to provide any evidence of the
23 Stalking Horse Purchaser’s ability to perform such terms fails to meet the standard under
24 § 365(f)(2)(B).

25 32. In light of the foregoing, the Court should not authorize the assignment of the
26 Capitation Agreements under § 365, unless and until, (i) the Debtor and the Stalking Horse
27 Purchaser provide United with the Financial Diligence and Delegation Diligence as
28 described above and in Exhibits A and B (including the on-site inspection), and (ii) such

diligence materials demonstrate that the Stalking Horse Purchaser will be able to perform these material terms of the Capitation Agreements.

B. The Debtors' Accounts Receivable Cannot Be Sold Free and Clear of United's Right of Recoupment

33. Recoupment is an equitable defense that may be used to apply debts arising from the same transaction against one another. *See Newbery Corp. v. Fireman's Fund Ins. Co.*, 95 F.3d 1392, 1399 (9th Cir. 1996). And it is often the case that one of those debts is a prior overpayment. *See In re TLC Hospitals, Inc.*, 224 F.3d 1008, 1012 (9th Cir. 2000). Because recoupment is a defense, it is not a "claim" or "interest" from which an asset can be sold free and clear under § 363(f). *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 261-62 (3d Cir. 2000); *In re Pers. Commc'ns Devices, LLC*, 556 B.R. 45, 54-55 (Bankr. E.D.N.Y. 2016); *Hispanic Indep. Television Sales, LLC v. Kaza Azteca Am. Inc.*, No. 10 CIV. 932 SHS, 2012 WL 1079959, at *5 (S.D.N.Y. Mar. 30, 2012) (recoupment is a defense, it is not extinguished by a section 363(f) sale").

34. Therefore, to the extent the Debtors are seeking to sell their accounts receivable owed under the FPA to the prevailing bidder(s) free and clear of United's right to recoup the pre- and post-petition overpayments owed to United (as described above), such relief should be denied.

III. CONCLUSION

WHEREFORE, United respectfully requests that the Court enter an order (i) denying the assignment of the Capitation Agreements under § 365, unless and until, (a) the Debtor and the Stalking Horse Purchaser provide United with the Financial Diligence and Delegation Diligence as described above and in Exhibits A and B (including the on-site inspection), and (b) such diligence materials demonstrate that the Stalking Horse Purchaser will be able to perform under the Capitation Agreements; (ii) denying the sale of the

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1 accounts receivable owed under the FPAs as being free and clear of United's right of
2 recoupment; and (iii) granting such further relief as the Court deems appropriate.

3
4 DATED: April 12, 2019

LAW OFFICE OF SUSAN I. MONTGOMERY

5 By /s/ Susan I. Montgomery

6 SUSAN I. MONTGOMERY

7 Attorneys for UnitedHealthcare Insurance Company
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DECLARATION OF PAUL J. CIRILLO IN SUPPORT OF
UNITED HEALTHCARE OBJECTION

I, PAUL J. CIRILLO, declare as follows:

1. I am employed by United HealthCare Services, Inc., an affiliate of UnitedHealthcare Insurance Company ("United"), as Director of Credit & Delinquency Management.

2. I submit this declaration in support of United's Objection to Debtors' Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances.

3. I make this declaration based on my personal knowledge and my personal knowledge of the books and records of United and would competently testify thereof under oath if requested to do so.

4. United and St. Francis Medical Center ("St. Francis") are parties to a Facility Participation Agreement with an effective date of April 1, 2007, which has been amended from time to time (the "St. Francis FPA").

5. United and St. Vincent Medical Center ("St. Vincent") are parties to a Facility Participation Agreement with an effective date of April 1, 2007, which has been amended from time to time (the "St. Vincent FPA").

6. United and Seton Medical Center ("Seton" and together with St. Francis and St. Vincent, the "Debtors") are parties to a Facility Participation Agreement with an

1 effective date of April 1, 2007, which has been amended from time to time (the “Seton FPA”
2 and together with the St. Francis FPA and St. Vincent FPA, the “FPAs”).¹

3 7. Pursuant to the FPAs, the Debtors agreed to provide certain covered hospital
4 services to United’s members insured under health care benefit plans, in exchange for certain
5 fees. In connection with paying claims submitted by the Debtors under the FPAs, United
6 will periodically overpay a claim for a variety of reasons.

7 8. Section 6.10 of the FPAs provides, in pertinent part, that if United believes that
8 a claim has not been paid correctly, or that funds were paid beyond or outside of what is
9 provided for under those agreements, United “may seek correction of the payment by giving
10 the [the Debtors] notice, within 12 months after the payment was initially made, that it
11 believes the payment was made incorrectly.”² The Debtors are required to repay
12 overpayments within 45 days of notice of the overpayment, and if they do not, United may
13 recoup the overpayments from future payments under the FPA.

14 9. United is owed overpayments on both a pre- and post-petition basis under the
15 FPAs as set forth below.

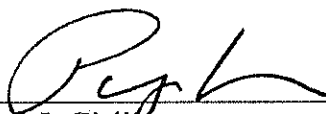
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25 ¹ The FPAs contain United’s highly confidential and sensitive commercial information. While the
26 Debtors should have copies of the FPAs, other parties in interest may request copies of such FPAs
27 by written request to the undersigned counsel and upon the entry into either an acceptable
28 confidentiality agreement or the entry of an appropriate protective order. If requested by the Court,
United will provide the FPAs to it for *in camera* review.

² The twelve-month time limitation does not apply to overpayments resulting from the Debtors’
fraud and abuse, or if United’s ability to discover the overpayment during the twelve-month period
was hindered by the Debtors’ failure to provide full and timely cooperation with an audit by United.

Contract	Pre-Petition Overpayments ³	Post-Petition Overpayments (as of March 13, 2019)
Seton FPA	\$181,170.82	\$85,474.47
St. Francis FPA	\$174,609.25	\$16,905.80
St. Vincent FPA	\$659,258.00	\$5,066.49

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 9 of April, 2019, at Hartford, Connecticut.



Paul J. Cirillo
Director of Credit and Delinquency Management
United HealthCare Services, Inc.

³ Proofs of claim have been timely filed for these amounts. See Claim Nos. 3725, 3728, and 3736.

DECLARATION OF TRINA HONEA IN SUPPORT OF
UNITED HEALTHCARE OBJECTION

I, TRINA HONEA, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am employed by United HealthCare Services, Inc., an affiliate of UnitedHealthcare Insurance Company (“United”), as Associate Vice President, Network Management.

2. I submit this declaration in support of United’s Objection to Debtors’ Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances (the “Objection”).

3. I make this declaration based on my personal knowledge and my personal knowledge of the books and records of United, and would competently testify thereof under oath if requested to do so.

4. United and St. Vincent Medical Center (“St. Vincent”) are parties to that certain PacifiCare of California Hospital Services Agreement (Split Capitation) effective January 1, 2002, as amended from time to time (the “St. Vincent Capitation Agreement”).

5. United and St. Francis Medical Center (“St. Francis”) are parties to that certain PacifiCare of California Hospital Services Agreement (Split Capitation) effective January 1, 2002, as amended from time to time (the “St. Francis Capitation Agreement,” and together with the St. Vincent Capitation Agreement, the “Capitation Agreements”).¹

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1 6. Under the Capitation Agreements, United pays St. Vincent and St. Francis a
2 per member, per month capitation fee. In exchange for this fixed fee, St. Vincent and St.
3 Francis provide two core functions.

4 7. First, St. Vincent and St. Francis provide and arrange for certain hospital
5 services for United's members insured under health maintenance organization health plans
6 (the "HMO Members") who are assigned to a primary care physician employed or contracted
7 with the medical group identified in the Capitation Agreements (the "Medical Group"). The
8 Capitation Agreements contain a division of financial responsibility ("DOFR") among
9 United, the Medical Group, and St. Vincent or St. Francis (as the case may be) for the
10 covered services rendered to United's members that specifies which party is responsible for
11 the cost of rendering such services. St. Vincent and St. Francis provide the hospital services
12 to the HMO Members themselves or through other contracted or non-contracted providers.

13 8. Thus, under the Capitation Agreements, St. Vincent and St. Francis bear the
14 financial risk to pay for all costs associated with the hospital services for the HMO Members
15 that are their financial responsibility under the DOFR. Given St. Vincent and St. Francis's
16 financial exposure under the Capitation Agreements, they are required to provide financial
17 information to United to establish their solvency, including financial statements, IBNR
18 (incurred but not reported claims) reserves, and a process for expense reduction. Indeed, a
19 capitated provider's insolvency is grounds for termination of the Capitation Agreements.

20 9. Second, under the Capitation Agreements, United has delegated to St. Vincent
21 and St. Francis functions relating to claims processing and payment, as well as reporting
22 related to the HMO Members medical care (collectively, the "Delegated Functions"). With
23 regard to the claims processing and payment function, St. Francis and St. Vincent are
24 required to comply with all current Centers for Medicare and Medicaid Services ("CMS")
25 regulations and guidelines, state regulations and guidelines, and United's guidelines for
26 processing and paying claims for services rendered to HMO members that are their financial
27

28 appropriate protective order. If requested by the Court, United will provide the Capitation
Agreements to it for *in camera* review.


1 responsibility. This function includes, but is not limited to, processing and paying claims
2 submitted by contracted and non-contracted providers; handling provider disputes; issuing
3 denials; corresponding with HMO members; and issuing checks, remittance advices, and tax
4 forms.

5 10. In addition, St. Francis and St. Vincent are required to submit to United
6 monthly encounter data (i.e., data on HMO Members' utilization of medical services)
7 consistent with the terms of and in the format specified by the Capitation Agreements,
8 United's guidelines, and CMS's requirements.

9 11. In light of the crucial role that St. Vincent and St. Francis play in providing and
10 paying for the health care services to the HMO Members, United has a robust set of due
11 diligence items that it reviews before approving a new capitated provider. In particular,
12 United requires a set of financial information to establish the provider's solvency and
13 financial ability to bear the risk of paying for its share of the HMO Members covered
14 services (the "Financial Diligence"). These due diligence items are attached as Exhibit A to
15 the Objection.

16 12. With regard to a prospective provider's ability to perform the Delegated
17 Functions, United also has a robust due diligence process, which includes the prospect's
18 submission of an operational review questionnaire and organizational chart, and a multi-day
19 on site inspection. In the inspection, United focuses on the prospect's ability to perform the
20 delegated claim processing and payment, as well as reporting functions. In most cases, the
21 prospective provider engages a third party management services organization ("MSO") to
22 perform the Delegated Functions. Thus, United reviews both the prospective provider and, if
23 applicable, the MSO to determine if, combined, the prospective provider is initially able to
24 perform the Delegated Functions. The inspection's detailed areas of inquiry are listed in
25 Exhibit B to the Objection.

1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 declaration was executed this 9th of April, 2019, at Sacramento, California.

3
4 

5 Trina Honea

6 Associate Vice President, Network Management

7 United HealthCare Services, Inc.
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Exhibit A

Exhibit A

EXHIBIT A

- Most recent interim financials, including balance sheet, income statement, equity statement, and cash flow statement.
- Most recent audited financial statement with footnotes, including balance sheet, income statement, equity statement, and cash flow statement.
- IBNR lag triangles
- Narrative describing their IBNR methodology
- Estimated non-contracted claim percentage

Exhibit B

Exhibit B

EXHIBIT B

Claims Processing Investigation Areas

- a. Adjudication of claims
- b. Priority claims processing ability
- c. Emergent/Urgent claims processing
- d. Authorizations in association with claims
- e. First level of denial notification (both to Members and Providers)
- f. Timely routing of misdirected claims
- g. Benefit and eligibility administration
- h. Provider contract reimbursement and claims process
- i. Compliance to regulations
- j. Daily/Monthly self-reporting and tracking
- k. Customer Service (answering United-, Customer-, and Provider inquires related to claims processing)
- l. Distribution of payments, 1099's and payment explanations (EOPs)
- m. Submission of Encounter Data
- n. Internal Policies and Procedures
- o. Fraud, Waste, and Abuse, Code of Conduct, and Conflict of Interest

Reporting Capabilities

Adequacy of Staffing

Ability to demonstrate systems utilized by your organization to capture and process claims received, with coordination of clinical staff on appropriate decision-making, notification and letters.

Evidence of sub-delegation contractual agreements and documented processes for monitoring the sub-delegated entity.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
1925 Century Park East, Suite 2000, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **OBJECTION OF UNITED HEALTHCARE INSURANCE COMPANY TO DEBTORS' MOTION FOR ORDER APPROVING FORM OF ASSET PURCHASE AGREEMENT FOR STALKING HORSE BIDDER, ETC. [Dkt No. 1279]; DECLARATIONS OF PAUL J. CIRILLO AND TRINA HONEA; EXHIBITS** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **April 12, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **April 12, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **April 12, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest M. Robles [By Federal Express]
United States Bankruptcy Court
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

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

April 12, 2019

Date

Susan I. Montgomery

Printed Name

/s/ Susan I. Montgomery

Signature

CONTINUED SERVICE PAGE

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