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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-20171-ER

Chapter 11 Cases

Hon. Ernest M. Robles

**OMNIBUS REPLY IN SUPPORT OF ENTRY OF  
AN ORDER: (A) AUTHORIZING THE SALE OF  
PROPERTY TO STRATEGIC GLOBAL  
MANAGEMENT FREE AND CLEAR OF ALL  
CLAIMS, LIENS AND ENCUMBRANCES; (B)  
AUTHORIZING THE ASSUMPTION AND  
ASSIGNMENT OF DESIGNATED EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES; AND  
(C) GRANTING RELATED RELIEF;  
DECLARATION OF SAM J. ALBERTS  
[RELATED DOCKET NOS. 1572, 1704, 1836, 2065]**

**Hearing:**

Date: April 17, 2019

Time: 10:00 a.m.

Place: Courtroom 1568

U.S. Bankruptcy Court

Los Angeles, CA 90012

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Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Cases”), in accordance with the terms of the *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* [Docket No. 1572] (the “Bidding Procedures Order”), hereby file this omnibus reply (the “Reply”) to (i) the objections to the proposed sale (the “Sale”) of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc. and Seton Medical Center and related assets (the “Assets”) to Strategic Global Management (“SGM”), and (ii) the objections by certain counterparties to proposed cure amounts or the assumption and assignment their agreements to SGM (the “Unresolved Objections”). This Reply also provides a summary to the Court of the various agreements reached with various counterparties resolving certain objections to the Sale. In support of the Reply, the Debtors respectfully state as follows:

#### **I. PRELIMINARY STATEMENT**

On February 19, 2019, the Court entered the Bidding Procedures Order, which, among other things, approved (i) the bidding procedures regarding the Sale of the Assets, and (ii) procedures related to the assumption and assignment of certain executory contracts and unexpired leases to the successful bidder. On March 5, 2019, the Debtors filed a *Notice of Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 1704] (the “Initial Cure Notice”), listing certain executory contracts and unexpired leases that may be assumed and assigned as well as proposed cure amounts. The Initial Cure Notice was supplemented twice on March 18, 2019 [Docket No. 1836], and on April 5, 2019 [Docket No. 2065]. On April 4, 2019, the Debtors filed a notice providing that no auction will be

1 held and naming SGM, the stalking horse bidder, as the winning bidder. [Docket No. 2053.]  
2 Certain parties filed objections to the Sale, to the cure amounts proposed by the Debtors and/or to  
3 the assumption and assignment of the agreements to SGM (the “Objections”). The Bidding  
4 Procedures Order provided a deadline for the Debtors to respond to such Objections of April 15,  
5 2019. As detailed herein, all of the Objections, except the Unresolved Objections, have been  
6 resolved or are moot (the “Resolved Objections”).

## 7 **II. SUMMARY OF RESOLVED OBJECTIONS**

8 The majority of the Resolved Objections relate to executory contracts or unexpired  
9 leases, which SGM elected not to designate for assumption and assignment. *See Notice of*  
10 *Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for*  
11 *Assumption and Assignment* [Docket No. 2131]. Given that these agreements are not being  
12 assumed or assigned, the Objections filed by the following counterparties relating to proposed  
13 cure amounts or to the assumption and assignment of the agreements to SGM are moot:

- 14 • Workday, Inc. [Docket No. 1804];
- 15 • LinkedIn Corporation [Docket Nos. 1870, 1877];
- 16 • Michael Pacelli [Docket No. 1874];
- 17 • Cerner Corporation [Docket No. 1885]; and
- 18 • Care 1st Health Plan [Docket No. 1891];

19 As to the remaining Resolved Cure Objections, which have been included in SGM’s list  
20 of contracts designated for assumption and assignment, below is a summary of the terms of each  
21 agreement resolving each objection:

| 22 <b>Counterparty</b><br><b>[Objection Docket No.]</b> | <b>Agreed Terms Resolving Objection</b>                                   |
|---|---|
| 23 Eurofins VRL, Inc.’s<br>24 [Docket No. 1788]         | Agreed to a total cure amount of \$161,614.25.                            |
| 25 Swinterton Builders<br>26 [Docket No. 1830]          | Agreed to cure amount of \$1,206,886.22 for<br>27 Construction Agreement. |
| 28  |   |

|                            |   |  |
|----------------------------|---|--|
| 1<br>2<br>3<br>4<br>5      | C.R. Bard, Inc.<br>[Docket No. 1852]                  | Agreed to the following aggregate cure amounts: <ul style="list-style-type: none"> <li>• Bard Agreements with St. Vincent Medical Center - \$96,502.85</li> <li>• Bard Agreements with St. Francis Medical Center - \$117,222.71</li> <li>• Bard Agreements with Seton Medical Center - \$19,618.94</li> </ul> |
| 6<br>7<br>8                | RightSourcing<br>[Docket No. 1856]                    | Agreed to the following cure amounts: <ul style="list-style-type: none"> <li>• Services-Staffing Agreement - \$718,019.86</li> <li>• Services-Staffing Agreement - \$201,703.02</li> </ul>   |
| 9<br>10                    | Sunquest Information System, Inc.<br>[Docket No 1876] | Agreed to a total cure amount of \$1,127,233.34.   |
| 11<br>12<br>13<br>14<br>15 | Tele Tracking Technologies, Inc.<br>[Docket No. 1892] | Agreed to the following cure amounts: <ul style="list-style-type: none"> <li>• 8/8/16 License-Software Agreement - \$8,827.56</li> <li>• 7/31/18 License-Software Agreement - \$14,150.92</li> <li>• 9/18/18 Ancillary and Support Services - \$35,179.17</li> </ul>   |
| 16<br>17                   | Hooper Healthcare Consulting LLC<br>[Docket No. 1926] | Agreed to a cure amount of \$9,400.00.   |
| 18<br>19                   | Transplant Connect<br>[Docket No. 1953]               | Agreed to a cure amount of \$60,090.33 for the Software Implementation and Services Agreement.   |

The Debtors will lodge an order approving the terms of each of the above agreements resolving the objections.

### III. CONTINUED UNRESOLVED OBJECTIONS

As the Court is aware, the sale hearing is scheduled on April 17, 2019 (the “Hearing”). Given that the closing is not anticipated until after the review process by the Attorney General, the Debtors determined that informally resolving objections related to cure and adequate assurance was the most efficient way to proceed. Thus, by way of stipulations, the Hearing as it relates to cure and adequate assurance issues on the majority of the Unresolved Objections have been continued by stipulation to June 5, 2019, at 10:00 a.m. (Pacific Time).

On April 12 2019, the Debtors filed an *Omnibus Stipulation Between the Debtors and the Counterparties Continuing Hearing on Certain Objections to Notice and Supplemental Notice of Contracts Designated for Assumption and Assignment* [Docket No. 2169] (the “Omnibus Stipulation”). The Order Approving the Omnibus Stipulation [Docket No. 2183] extended the Debtors’ reply deadline to May 29, 2019, and continued the hearing date to June 5, 2019, at 10:00 a.m. (Pacific Time) for the following objections: NFS Leasing, Inc. [Docket No. 1819]; Roche Diagnostics Corporation [Docket No. 1849]; NTT DATA Services Holding Corporation [Docket No. 1853]; AppleCare Medical Group, Inc.; AppleCare Medical Group, St. Francis Inc., and AppleCare Medical Management LLC [Docket No. 1857]; UnitedHealthcare Insurance Company [Docket No. 1858]; GE HFS, LLC [Docket No. 1863]; Kaiser Foundation Hospitals; Experian Health Inc., f/k/a Passport Health Communications, Inc. [Docket No. 1866]; Smith & Nephew, Inc. [Docket No. 1873]; Conifer Health Solutions, LLC [Docket No. 1875]; Medtronic USA, Inc. [Docket No. 1881]; QuadraMed Affinity Corporation and Picis Clinical Solutions Inc. [Docket No. 1882]; Angeles IPA Medical Group [Docket No. 1933]; Aetna Life Insurance Company [Docket No. 1930]; Parallon Revenue Cycle Services, Inc. f/k/a The Outsource Group, Inc. [Docket Nos. 1904, 2113]; St. Vincent IPA [Docket No. 1949]; SCAN Health Plan [Docket No. 1965]; DaVita Inc. [Docket No. 2058]; and Premier, Inc. and its subsidiaries [Docket Nos. 1954, 2066]. For the avoidance of doubt, the Omnibus Stipulation continued each of the above-referenced objections in their entirety.

The hearing on following Unresolved Objections were also continued to June 5, 2019, at 10:00 a.m. (Pacific Time), by individual stipulations:

- Alcon Vision, LLC Objections [Docket Nos. 1704, 2108] - Stipulation and Order [Docket Nos. 2142, 2163];
- California Department of Health Care Services’ Objection [Docket No. 1879] - Stipulation and Order [Docket Nos. 2125, 2153];
- Cigna Healthcare of California Inc., Cigna Health and Life Insurance Company and Life Insurance Company of North America Objection [Docket No. 1850] - Stipulation [Docket No. 2190];
- Abbott Laboratories Inc. and Alere Informatics, Inc. Objection [Docket No. 1890] -

Stipulation [Docket No. 2191];

- SCAN Health Plan Objection [Docket No. 2162] - Stipulation [Docket No. 2192];
- Health Net Objection [Docket No. 1940] - Stipulation [Docket No. 2193];
- United Healthcare Objection [Docket No. 2145] - Stipulation [Docket No. 2194];
- Applecare Medical Group, Inc. and Applecare Medical Group St. Francis, Inc. Objection [Docket No. 2144] - Stipulation [Docket No. 2194]; and
- NantHealth, Inc. Objection [Docket No. 2157] - Stipulation [Docket No. 2208].

**IV. RESPONSE TO CARDINAL HEALTH OBJECTION [DOCKET NO. 2161]**

On April 12, 2019, Cardinal Health filed the *Objection of Cardinal Health 110, LLC, Cardinal Health 200, LLC, and Cardinal Health 414, LLC to Cure Amounts Set Forth in Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May be Assumed and Assigned and Supplemental Notice* [Docket No. 2161] (the “Cardinal Objection”). The Debtors have been in discussions regarding cure amounts related to certain executory contracts with Cardinal Health and request that the Court continue the April 17th hearing regarding the Cardinal Objection to allow additional time to review and reconcile such amounts. The Debtors also request that the Court extend the Debtors’ deadline to file a substantive reply to the Cardinal Objection to May 29, 2019, at 4:00 p.m. (Pacific Time). The Debtors have contacted Cardinal Health to request a continuance, but have not yet received a response.

**V. RESPONSE TO OBJECTION FILED BY THE CALIFORNIA ATTORNEY GENERAL [DOCKET NO. 1352]**

On January 25, 2019, the Attorney General of California (the “AG”) filed an objection to the Debtors’ motion to approve the proposed bidding procedures [Docket No. 1352] (the “AG Objection”). The Court’s Bidding Procedures Order held that the AG Objection was premature and preserved the AG Objection for the Sale Hearing. *See* Bidding Procedures Order, ¶ 6. After discussions between the Debtors and the AG, the Debtors and the AG have agreed to include the following language in the proposed Sale Order, which will resolve the AG Objection:

The California Attorney General, the Debtors, the Consultation Parties (as defined in the Bid Procedures Order) and the Purchaser, reserve all rights, arguments and



1 defenses concerning the California Attorney General's authority, if any, to review  
2 the Sale under California Corporations Code sections 5914-5924 and California  
3 Code of Regulations - Title 11, Chapter 15, section 999.5, and any conditions  
4 issued thereto. Nothing in this stipulation or sale order shall be construed as a  
waiver of the Attorney General's statutory and regulatory authority or other  
rights.

5 **VI. RESPONSE TO OBJECTIONS FILED BY MGH PAINTING, INC. [DOCKET NO.**  
6 **1358] AND BELFOR USA GROUP, INC. [DOCKET NOS. 1364, 2130]**

7 Holders of mechanic's liens, MGH Painting, Inc. ("MGH") and Belfor USA Group, Inc.  
8 ("Belfor") filed limited objections to the Debtors' motion to approve the proposed bidding  
9 procedures [Docket Nos. 1358, 1364 and 2130]. The Court's Bidding Procedures Order found  
10 that these objections were premature and preserved them for the Sale Hearing. *See* Bidding  
11 Procedures Order, ¶ 6.<sup>1</sup> MGH and Belfor object to the sale of St. Vincent Medical Center free  
12 and clear of their asserted mechanic's liens and seek confirmation that such liens will attach to the  
13 proceeds of the sale. The Debtors have reviewed the mechanic's liens recorded by MGH and  
14 Belfor and confirm that the mechanic's liens will attach to the proceeds of the sale of St. Vincent  
15 Medical Center.

16 **VII. RESPONSE TO OBJECTIONS FILED BY ST. VINCENT IPA MEDICAL**  
17 **CORPORATION AND ANGELES IPA MEDICAL GROUP [DOCKET NOS. 1933, 1949,**  
18 **2146, 2148, 2150]**

19 **A. Objections to Cure Amounts**

20 Angeles IPA Medical Group ("Angeles IPA") and St. Vincent IPA Medical Corporation  
21 ("St. Vincent IPA") raise similar objections [Docket Nos. 1933 and 1949] to the "cure amounts"  
22 proposed by the Debtors' Initial Cure Notice, the cure amounts having been amended to "TBD,"  
23 as an acronym for "To Be Determined" [Docket Nos. 1793 and 1836]. Involved in both  
24 instances are Healthcare Services Risk Sharing Agreements and amendments thereto by which St.  
25 Francis Medical Center (with respect to Angeles IPA) and St. Vincent Medical Center (with  
26 respect to St. Vincent IPA) treat patients under the terms of prepaid capitated health care plans.  
The physician associations are compensated for their services in managing patient care based on a

27 <sup>1</sup> Belfor later filed another limited objection on April 11, 2019 [Docket No. 2130] which makes  
28 the same argument in its prior objection.

1 computation that compares the revenues received by each of St. Francis Medical Center and St.  
2 Vincent Medical Center (under the capitated plans), against the expenses incurred for treating  
3 patients at the capitated hospitals or third party out of network locations. This computation  
4 entails detailed calculations of estimated expenses that are to be trued up after each calendar year.  
5 The reconciliation of estimated and actual expenses is further complicated by the significant lag  
6 time between the dates of treatment and billing.

7 Consistent with the terms of the agreements, the process for “truing” the expenses for  
8 calendar year 2018 is underway but is not yet completed. The 2019 expenses will not be finalized  
9 until well into 2020. The IPAs assert that the Debtors’ estimates of previously incurred expenses  
10 are not accurate (for a variety of reasons) and, hence, that the compensation due to them has been  
11 under-reported. In pursuit of their objections, the IPAs have served certain discovery requests on  
12 the Debtors.<sup>2</sup>

13 The Debtors acknowledge their obligations to adopt reasonable estimation methods, but  
14 dispute that their methods are unreasonable, and thus generally disagree with the competing “cure  
15 amounts” proposed by the IPAs. Nevertheless, in an effort to reach consensus about the cure  
16 obligations, the Debtors have retained third-party actuarial experts to objectively assess the  
17 expense history and accounting of each risk pool. The IPAs have had access to, and are now  
18 reviewing, these calculations. The parties also met on April 9 and 10 to discuss their differences  
19 and a means for reaching resolution. A stipulation has now been executed and filed and approved  
20 by the Court to continue a hearing on the objections until at least June 5 [*see* Docket Nos. 2169,  
21 2183], with the Debtors’ written responses to be filed shortly before that date, and the parties are  
22 cooperating on the exchange of any substantive information to obviate the need for formal  
23 discovery.<sup>3</sup>

---

24 <sup>2</sup> Debtors maintain all rights to timely object to each of the purported discovery requests.

25 <sup>3</sup> After the Omnibus Stipulation was signed, Angeles IPA and St. Vincent IPA filed objections to  
26 the assumption or assumption and assignment of executory contracts [Docket Nos. 2148 and 2150]  
27 which merely incorporate by reference and restate their prior objections [Docket Nos. 1933 and  
28 1949] which were continued by Omnibus Stipulation.

**B. Payment of Cure Costs By SGM**

St. Vincent IPA's Renewal of Limited Objection to the Sale [Docket No. 2146] purports to rely upon an erroneous statement in the Debtors' Bid Procedures Motion [Docket No. 1279] to advance the proposition that segregation of Sale proceeds is somehow appropriate for their disputed claim. However, Section 5.8 of the SGM's Asset Purchase Agreement, attached to the Bid Procedures Motion as Exhibit A (the "APA"), provides:

Purchaser, upon assumption, shall pay the Cure Costs for each Assumed Contract and Assumed Lease so that each such Assumed Contract and Assumed Lease may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code. For purposes of this Agreement, "Cure Costs", means all amounts that must be paid and all obligations that otherwise must be satisfied, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of the Assumed Contracts and Assumed Leases to Purchaser as provided herein.

The direct payment of cure costs by SGM also appears in the text of the Bid Procedures Motion. [Docket No. 1279 at p. 27.] It is as a result of the express terms of the APA, that neither the Bidding Procedures Order or the Notice [Exhibit 3, Docket 1572] provide for any segregation, reserves or hold backs of any kind. Indeed, under Section 1.5 of the APA, SGM is required to deliver "1.5.2 evidence of payment of all Cure Costs required hereunder to be paid by Purchaser [...]."

Under the Final DIP Order [Docket No. 409], all delivered Sale proceeds are subject the "Escrow Deposit Account" provisions of the Final DIP Order. *See ¶M*, and §4, Final DIP Order. The Debtors cannot "spend" Sale proceeds, to the extent that is the actual concern of St. Vincent IPA, because under § 4 of the Final DIP Order, the Debtors are not permitted to use Sale proceeds or to comingle funds contained in an Escrow Deposit Account with other accounts of the same or different selling Debtors without a further Court order. All such Sale proceeds are the collateral of the DIP Lenders and the Prepetition Secured Creditors and there is no order of this Court that

1 prospectively permits use of such Sale proceeds from SGM, except as part of the Borrowing Base  
2 under the DIP Credit Agreement.

3 St. Vincent IPA has not suggested in its Limited Objection that SGM is unable or  
4 unwilling to satisfy its obligations under the APA with respect to St. Vincent IPA. As a result,  
5 the Debtors have modified § 15 of the proposed Sale Order to provide as follows:

6 To the extent an Assumption Dispute relates solely to the Cure Amount, the  
7 Debtors may assume and/or assume and assign the applicable executory  
8 contract or unexpired lease prior to the resolution of the Assumption  
9 Dispute by the Bankruptcy Court, provided, that either (a) the Bankruptcy  
10 Court has estimated the maximum cure payment, pursuant to 11 U.S.C. §  
11 502(c), and Buyer has remitted such amount to the Debtors to be held as  
12 sales proceeds in the Sale Proceeds Account for the relevant Debtor(s), or  
13 (b) the Buyer provides to the relevant Debtor(s) a separate reasonably  
14 acceptable undertaking to pay the disputed cure amount (or such smaller  
15 amount as may be fixed or estimated by the Bankruptcy Court or otherwise  
16 agreed to by such non-Debtor party and the applicable Buyer). The Debtors  
17 shall be and hereby are authorized to pay disputed cure amounts from the  
18 relevant Sales Proceeds Account(s) upon entry of a final order by this Court  
19 to the extent the Buyer remitted to Sellers the amount required by item (a) of  
20 this paragraph of the Order.

21 In the absence of estimation of a maximum cure payment and Buyers' remittance of such  
22 sum to the Debtors, it is the business judgement of the Debtors that a SGM confirmation at  
23 closing that Section 5.8, APA is applicable to the St. Vincent IPA agreement, along with actual  
24 payment of the undisputed cure cost pursuant to Section 1.5.2, APA, would be a sufficient  
25 "undertaking" to permit assumption and assignment of the St. Vincent IPA agreement.

26 **VIII. RESPONSE TO OBJECTIONS AND RESERVATIONS OF RIGHTS FILED BY**  
27 **SEIU-UHW [DOCKET NO. 2147] AND UNITED NURSE ASSOCIATIONS OF**  
28 **CALIFORNIA [DOCKET NO. 2155]**

Service Employees International Union, United Healthcare Workers-West ("SEIU-  
"UHW") and United Nurses Association of California ("UNAC," and referred to collectively as  
the "Union Objectors") each filed objections and reservations of rights to [Motion for Approval  
of Sale of the Remaining Hospitals], lodged at Dkt. No. 2147 (the "SEIU Objection") and Dkt.  
No. 2155 (the "UNAC Objection," and referred to collectively with the SEIU Objection as the  
"Union Objections").

At bottom, the Debtors do not oppose Union Objectors’ request to reserve rights to oppose any effort to modify, reject and terminate applicable collective bargaining agreements that may be pursued pursuant to separate motion under § 1113, but otherwise believe that any remaining objection is without merit, should be overruled and should not act as a basis to deny approval of the sale to SGM. Before addressing the Union Objections directly, the Debtors wish to emphasize relevant facts.

First, the Union Objectors represent two of five unions with prepetition collective bargaining agreements (the “CBAs”) concerning one or more of the remaining hospitals that are the subject of the pending sale to SGM. The other unions are California Nurses Association (“CNA”), Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC (“Local 20”) and National Union of Healthcare Workers (“NUHW,” and collectively referred to with CNA and Local 20 as the “Non-Objecting Unions”).<sup>4</sup>

Second, as set forth in §§ 4.7 and 5.11 of the APA, SGM is amenable to negotiating modifications to existing CBAs that could lead to their acceptance and assignment by SGM. This point is recognized by UNAC when it writes “APA §§ 4.7 and 5.11 commit the Debtors and purchaser Strategic Global Management, Inc. (‘SGM’) to participating in negotiation of collective bargaining agreements that may be acceptable to SGM.” UNAC Objection at p. 2, l. 27- p.3, l. 1. SGM’s desire to seek modifications of the CBAs stands in contrast to terms of the APA with Santa Clara County (“SCC”), which provided that SCC would not take assignment of any CBAs. As the Court will recall, the motion approving the sale to SCC was granted in advance of § 1113 relief being sought. *See* Docket No. 1153 (order approving sale to SCC) (Dec. 27, 2018); Docket Nos. 1181; 1182; 1191; 1192 (motions for relief under § 1113 connected to SCC sale) (Jan. 3, 2019).

Third, the Debtors recognize that any modification or rejection of the CBAs will require union consent or affirmative relief pursuant to the procedures of § 1113. Because SGM has

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<sup>4</sup>In addition, Seton and St. Louise are parties to certain postpetition CBAs with International Union of Operating Engineers, Stationary Engineers, Local 39 (“Local 39”) which has not lodged an objection.

1 already determined it will not take over Debtor pension-related obligations, which obligations fall  
2 under the CBAs and the Debtors will be effectively liquidating post-closing of this sale, the  
3 Debtors anticipate that in addition to modification or rejection of the CBA, termination of any  
4 remaining continuing Debtor CBA-related obligations will be necessary. As such, it anticipates  
5 that some level of formal relief under § 1113 may be required with respect to at least certain of  
6 the remaining prepetition CBAs. However, until those negotiations occur, it is impossible to  
7 determine what modifications may be needed and whether rejection and termination will need to  
8 be sought.

9 Fourth, on February 1, 2019, subsequent to the filing and approval of the APA and related  
10 bid procedures motion, Debtors sent § 1113 proposals to Objecting Unions and Non-Objecting  
11 Unions advising them of the terms of the APA and the likely process going forward. *See*  
12 Declaration of Sam A. Alberts attached hereto, at ¶ 3. Thereafter, the Debtors held meetings with  
13 each of these unions to further discuss the process in light of the facts as then known. *Id.* The  
14 Debtors anticipate that upon Court approval of SGM as purchaser of the remaining hospitals, the  
15 § 1113 process will continue and, depending on the outcome, formal relief under § 1113 may be  
16 sought. *Id.*

17 **A. UNAC's Objection**

18 The UNAC Objection is largely, if not entirely, a reservation of rights and, as such, the  
19 Debtors largely do not oppose it. In fact, the UNAC Objection is principally dedicated to  
20 asserting UNAC's desire to negotiate with the Purchaser and Debtors and to preserve its rights to  
21 contest any formal relief that may be sought under § 1113. As the Debtors recognize both the  
22 terms of the APA and the requirements of § 1113, it finds these reservations unnecessary,  
23 although non-objectionable. Nevertheless, in an effort to address such concerns, the Debtors have  
24 included the following language in paragraph 33 of the proposed Order:

25 33. In accordance with the terms of sections 4.7 and 5.11 of the APA, the Debtors  
26 and Purchaser will seek modification of applicable collective bargaining  
27 agreements (the "CBAs"). To the extent the Debtors seek modification, rejection  
28 and/or termination of CBAs, they will comply with the requirements of § 1113, as  
applicable, and may do so before or after Closing under their discretion.

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1 In fact, the only statement that the Debtors take issue with is UNAC's assertion that "rejection of  
2 the collective bargaining agreement is not a condition of the sale." UNAC Objection, p. 2, ll.26-  
3 27. This statement is misleading and not fully accurate. It is true that the Purchaser has agreed to  
4 seek modification of the CBAs, which, if effectuated may obviate the need for other forms of  
5 relief. However, the APA expressly reserves the right for both the Purchaser and Debtors to seek  
6 rejection. *See* APA § 4.7 (" . . . Sellers and Purchaser will jointly consider, and negotiate  
7 mutually in good faith, alternative approaches that may be available and/or necessary to reduce  
8 Sellers' labor cost structure, including, but not limited to, *seeking to reject the collective*  
9 *bargaining agreement(s).*") (emphasis added); APA § 5.11 ("The parties recognize that an  
10 applicable Seller's failure to secure a modification to any collective bargaining agreement, or to  
11 conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation  
12 under this Agreement. In addition, *Sellers may, in their discretion, seek to reject any or all of the*  
13 *collective bargaining agreement(s).*") (emphasis added). However, this point of "disagreement"  
14 is relatively minor and should not affect approval of the sale to SGM. If the Court disagrees,  
15 however, the Debtors request that the Court overrule the UNAC Objection.

16 **B. SEIU-UHW's Objection**

17 In contrast to UNAC's Objection, which appears to be a reservation of rights, SEIU-  
18 UHW's Objection is exclusively an objection. At its core, SEIU-UHW argues that the Sale to  
19 SGM cannot be approved because the Debtors have not yet formally moved for relief under §  
20 1113 to modify or reject its CBA. These arguments are a near-verbatim repetition of the  
21 objections raised (and overruled) in connection with the motion seeking approval of the bid  
22 procedures in connection with this Sale. *See SEIU-UHW's Objection and Reservation of Rights*  
23 *to Debtors' Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase*  
24 *Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Auction Sale Format,*  
25 *Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be*  
26 *Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale*  
27 *to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain*  
28 *Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale and*

1 *Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and*  
2 *Authorities in Support Thereof* [Docket No. 1279]; Bidding Procedures Order at ¶ 2. Although  
3 the Court ruled that these arguments could be reasserted in connection with the Sale hearing, this  
4 distinction does not change the outcome for several reasons.

5 First, SGM has already committed itself to negotiate with all unions in an effort to modify  
6 the CBAs. However, at this point, several months before Closing, it is unclear which  
7 modifications may be necessary to SGM. Similarly, it is possible that such negotiation may lead  
8 to consensual acceptance by the union of the terms of modification. However, until those  
9 negotiations occur, it would be premature for the Debtors to formally move for—let alone  
10 obtain—relief under § 1113.

11 Second, the Debtors approach to the issue of § 1113 relief has been consistent throughout  
12 these cases and one in which the Court has thus far accepted as being prudent and proper. For  
13 example, in connection with the SCC Sale, the Debtors' moved for § 1113 only after it was  
14 established that SCC was the purchasing party and that it would not take assignment of any CBA.  
15 Here, the successful bidder (SGM) has indicated a willingness to negotiate potential  
16 modifications of CBAs. As such, requiring the Debtors to seek § 1113 relief at this juncture  
17 would be counterproductive, an inefficient use of estate resources and contrary to the best  
18 practices utilized throughout this case.

19 Third, Courts have consistently recognized that sales may be approved in advance of §  
20 1113 relief, including where the debtor and/or purchasers have committed to trying to negotiate  
21 modifications with the unions. *See In re Maxwell Newspapers, Inc.*, 981 F.2d 85, 91 (2d Cir.  
22 1992) (allowing sale process to go forward that could alter CBA with continued negotiations and  
23 consultation under § 1113 framework); *In re Journal Register Co.*, 488 B.R. 835, 840 (Bankr.  
24 S.D.N.Y. 2013) (discussing § 1113(f) *in dicta* that in general a sale cannot constitute a rejection  
25 or modification without § 1113 compliance but allowing sale in question to go forward). Those  
26 decisions also are more relevant and legally persuasive than the cases cited in opposition by SEIU-  
27 UHW, including *In re Agripac, Inc.*, No. 699–60001, slip. op., (Bankr. D. Or. Apr. 2, 1999),  
28 where the debtor attempted to close a sale despite a successor clause in an unrejected collective



1 bargaining agreement and without prior recourse to § 1113, and in *American Flint Glass Workers*  
2 *Union v. Anchor Resolution Corp*, 197 F.3d 76 (3d Cir. 1999) where a debtor actually closed a  
3 sale after representing it would be assuming the CBA, and then months later sought to avoid CBA  
4 obligations when the purchaser stopped making payments to the unions. The Debtors' actions are  
5 also distinguishable from *In re Stein Henry*, No. 91-15491S, 1992 WL 122902 (Bankr. E.D. Pa.  
6 June 1, 1992), cited by SEIU-UHW, which involved a debtor's request for confirmation of a plan  
7 that would result in a specific sale ignoring a union contract successor clause without  
8 modification or rejection under § 1113. Here, as done in the past, the Debtors will seek any  
9 modifications or rejections under § 1113 in a timely manner if necessary.

10 SEIU-UHW's reliance on *In re Lady H Coal Co., Inc.*, 193 B.R. 233, 241 (Bankr. S.D.  
11 W.Va. 1996) is similarly misplaced. There, prior to seeking relief under § 1113, the debtors  
12 unilaterally hired a broker without noticing the estate, expended "little effort" and actively  
13 avoided an offer that would have kept the business open and the CBAs in place, and instead  
14 executed an APA that would shut down its operations (and concurrent, insider "sweetheart"  
15 deals), pursuant to which (because the business would be shutting down) the CBA would not be  
16 assigned instead of leaving open only the prospect of administrative expense damages. Here, the  
17 Debtors properly hired an investment banker to sell their assets and have accepted an offer from a  
18 purchaser who desires to negotiate with the unions with respect to modifications of the CBA.

19 At bottom, there is no requirement under § 1113 or a logical reason why § 1113 relief  
20 must be sought and obtained prior to approval of a sale, particularly when the purchaser has stated  
21 an intention to negotiate changes to the CBA that may permit its assumption or other consensual  
22 resolution with the unions. See *In re Family Snacks, Inc.*, 257 B.R. 884, 895–96 (B.A.P. 8th Cir.  
23 2001) ("there is nothing in the language of § 1113 that dictates when an application to reject must  
24 be made [and] the timing of such action is governed, not by § 1113, but by § 365(d)(2), which  
25 allows a debtor to defer such a decision until confirmation of a plan") (facts involved sale motion  
26 filed before § 1113 motion). In *Family Snacks*, the Court stated:

27 When a debtor is selling on a going concern basis, the union urges . . . the only  
28 meaningful time the court can make a decision on rejection is prior to the sale.

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We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. . . In an auction setting, for sure, negotiations for rejection would be virtually impossible. It is difficult to accept the argument that § 1113 was designed to give a union the power to so strangle a debtor’s attempts to reorganize through liquidation. *We see no principled reason to limit a debtor’s right to reject a CBA to a case where the application to reject comes before an asset sale.*

*Family Snacks*, 257 B.R. at 897 (emphasis added); *id.* at 898 (“the Debtor can make [the] showing [required to reject under § 1113] *before, at, or after the asset sale*, and thereby satisfy the requirements for rejection of the CBA, § 1113 should not be read to preclude the Debtor from doing so after the § 363 asset sale in this case.”) (emphasis added); *see also Walter*, 542 B.R. at 890 (union “is not entitled to a veto power over a going concern sale when the undisputed evidence establishes that it is the best way to maximize value for all creditors and provide the best chance for future employment for the Debtors’ employees . . . [instead] its purpose is to prevent the Debtors from unilaterally rejecting the . . . CBA, [and] to encourage negotiations . . .”).

SEIU-UHW’s assertion that the Debtors seek and complete a complex contested matter under § 1113 through the filing of substantive motions also cuts against the purpose of “section 1113 case [which reflects] Congress’ intention that the parties try as hard as they can to reach a negotiated, and nonjudicial, resolution” before final, contested relief is sought. *In re Pinnacle Airlines Corp.*, 483 B.R. 381, 411 (Bankr. S.D.N.Y. 2012), as corrected (Nov. 29, 2012). Therefore, SEIU-UHW’s assertion that “[h]ere, the Debtors have not bargained in good faith with SEIU-UHW or complied with the procedures of Section 1113 prior to unilaterally altering the requirements of the CBA by entering into the APA that does not contain required language” is not supported by fact and law, and should be overruled.

**IX. RESPONSE TO CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT  
AUTHORITY [DOCKET NO. 2168]**

The Debtors have resolved the objections of California Statewide Communities Development Authority (“CSCDA”). The parties have agreed to a form of Assignment and Assumption Agreement to be executed by the Buyer and Seton Medical Center as seller and

1 assignee (the “Assignment”). The Assignment will contain an agreed form of acknowledgement  
2 as contemplated by APA, Section 1.4.9 to be executed by CSCDA and Wilmington Trust, N.A. as  
3 Indenture Trustee for the PACE Obligations.

4 **X. OTHER LIMITED OBJECTIONS**

5 The Debtors also note that the Official Committee of Unsecured Creditors (the  
6 “Committee”), U.S. Bank National Association (“U.S. Bank”) and Long Beach Memorial  
7 Medical Center (“Long Beach”) each filed limited objections and reservations of rights  
8 concerning the proposed Sale to SGM. [See Docket Nos. 1946, 2156 and 2164.] Long Beach’s  
9 objection [Docket No. 1946] reserves its right to the Sale at a later time. However, no further  
10 objection has been filed by Long Beach. U.S. Bank’s objection [Docket No. 2156] explains that  
11 it has not yet seen a draft of the proposed Sale Order and reserves the right to object to the  
12 proposed Sale Order. The Debtors will work with U.S. Bank to satisfy any concerns they have  
13 regarding the proposed Sale Order. The Committee does not object to the Sale but states in its  
14 objection [Docket No. 2164] that the Committee “does not concede that the Prepetition Secured  
15 Creditors have perfected liens on the sale proceeds to the extent that such proceeds are related to  
16 assets that remain the subject of the Committee’s investigation.” None of these limited objections  
17 are to the Sale to SGM and, thus, should not preclude the Court from entering an order approving  
18 the Sale.

19 WHEREFORE, the Debtors respectfully request that the Court enter an order (i)  
20 approving the Sale to SGM, and (ii) granting such further relief as necessary.

21 Dated: April 15, 2019

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

22 By /s/ Tania M. Moyron  
23 Tania M. Moyron

24  
25 Attorneys for the Chapter 11 Debtors and  
26 Debtors In Possession  
27  
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**DECLARATION OF SAM J. ALBERTS**

I, Sam J. Alberts, declare, that if called as a witness, I would and could competently testify thereto based on my own personal knowledge, as follows.

1. I am an attorney at law, licensed to practice in the Commonwealth of Virginia, the District of Columbia, the State of Washington and, by reason of admission *pro hac vice* [Docket No. 89], to the United States District Court for the Central District of California, in the United States Bankruptcy Court for the Central District of California.

2. I submit this declaration in support of the *Omnibus Reply in Support of Entry of an Order: (A) Authorizing the Sale of Property to Strategic Global Management Free and Clear of All Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; And (C) Granting Related Relief* (the "Omnibus Reply"). All capitalized terms not defined herein have the meaning ascribed to them in the Omnibus Reply.

3. On February 1, 2019, on behalf of the Debtors, I sent § 1113<sup>5</sup> proposals to unions who have prepetition collective bargaining agreements with one or more of the hospitals that are subject to the proposed purchase and sale to SGM, including Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW") and United Nurses Association of California ("UNAC"), copies of which are attached hereto as Exhibits 1 and 2, respectively. The § 1113 proposals advised these unions of the terms of the SGM APA and the likely process going forward.

4. Thereafter, the Debtors held meetings with each of these unions to further discuss the process in light of the facts as then known. Specifically, Richard Adcock (the Debtors' CEO), Steven Sharrer (the Debtors' Chief Human Resources Officer), and I met with representatives of UNAC on or about February 14, 2019, and met with SEIU-UHW on or about March 14, 2019.

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<sup>5</sup> Unless otherwise stated, all references to sections herein are to the Bankruptcy Code, title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

1           5.       The Debtors anticipate that upon Court approval of SGM as purchaser of the  
2 remaining hospitals, the § 1113 process will continue and, depending on the outcome, formal  
3 relief under § 1113 may be sought.

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

6           Executed this 15th day of April, 2019 in Washington, DC.

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SAM J. ALBERTS