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10 Medical Corporation
11

12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**
14

15 In re
16 VERITY HEALTH SYSTEM OF
17 CALIFORNIA, INC., et al.,
18 Debtors and Debtors in Possession.

19
20 Affects St. Vincent Medical Center
21
22

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

Chapter 11; Assigned to Hon. Ernest M.
Robles

**ST. VINCENT IPA'S NOTICE OF
MOTION, MOTION TO ENFORCE
CRITICAL VENDOR AGREEMENT,
MEMORANDUM OF POINTS AND
AUTHORITIES, AND
DECLARATION OF DR. JEFFREY
HENDEL**

Date: March 18, 2020

Time: 10:00 a.m.

Place: Courtroom 1568
United States Bankruptcy Court
Central District of California
Roybal Courthouse
255 E. Temple St.
Los Angeles, CA 90012

Petition Filed: August 31, 2018



1 **PLEASE TAKE NOTICE** that, on March 18, 2020 at 10:00 a.m., in Courtroom
2 1568 of the United States Bankruptcy Court, Central District of California, Roybal
3 Courthouse, 255 E. Temple St., Los Angeles, CA 90012, St. Vincent IPA Medical
4 Corporation (“Group”) will move this Court for entry of an order (the “Motion”) to
5 enforce Verity Health System of California, Inc.’s, and the above-captioned debtors’
6 (collectively, the “Debtors”) compliance with an April 3, 2019 settlement agreement
7 between Group and Debtors (the “Critical Vendor Agreement”). This Court approved the
8 Critical Vendor Agreement on May 14, 2019 (Doc. 2371). Under the Critical Vendor
9 Agreement, Debtors are required to pay Group an interim settlement payment of
10 \$150,000.00 for each post-petition month Group provides services under the Critical
11 Vendor Agreement. Group provided services to the Debtor under the Critical Vendor
12 Agreement in January 2020. The Debtors have refused to pay the agreed upon interim
13 settlement payment. Group seeks to enforce Debtors’ compliance with this payment
14 provision.

15 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of
16 Motion, Motion to Enforce Critical Vendor Agreement, the accompanying Memorandum
17 of Points and Authorities, and Declaration of Jeffrey Hendel, M.D. (the “Hendel
18 Declaration”), the Critical Vendor Agreement, the order approving the Critical Vendor
19 Agreement (Doc. 2371), the supporting statements, arguments and representations of
20 counsel who will appear at the hearing on the Motion, the record in these bankruptcy
21 cases, and any other evidence properly brought before the Bankruptcy Court in all other
22 matters of which the court may properly take judicial notice.

23 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(f)(1), any
24 party opposing or responding to the Motion must file a response (the “Response”) with
25 the Bankruptcy Court and serve a copy of it upon the moving party and the United States
26 Trustee not later than 14 days before the date designated for the hearing on the Motion.
27 Any Response must be a complete written statement of all reasons in opposition or in
28 support of the Motion, and include any declarations and copies of all evidence on which

1 the responding party intends to rely, and any responding memorandum of points and
2 authorities.

3
4 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(h), the
5 failure to file and serve a timely objection to the Motion may be deemed by the
6 Bankruptcy Court to be consent to the relief requested therein.

7
8 Dated: February 24, 2020

CARLTON FIELDS, LLP
MARK A. NEUBAUER
DONALD R. KIRK
J. RYAN YANT

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10
11 By: /s/ Mark A. Neubauer
12 Mark A. Neubauer
13 Attorneys for St. Vincent IPA
14 Medical Corporation
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

St. Vincent IPA Medical Corporation (“Group”) seeks to enforce the April 3, 2019 settlement agreement (the “Critical Vendor Agreement”) entered into between the Group and Verity Health of California, Inc. and the above-captioned affiliated debtors (collectively, the “Debtors”) and the related *Order Granting Debtors’ and Official Committee of Unsecured Creditors’ Joint Notice of Motion and Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 363 and 105 and Fed. R. Bankr. P. 9019 Authorizing Entry into Settlement Agreement with St. Vincent IPA* (Doc. 2371, the “Order”) which approved the Critical Vendor Agreement. Specifically, the Group seeks to enforce the Critical Vendor Agreement provision, paragraph d, that requires Debtors to pay the Group \$150,000 for providing services rendered during January 2020.

The Critical Vendor Agreement settled pre and post-petition disputes between Group and St. Vincent Medical Center (“Hospital”) relating to the Healthcare Services Risk Sharing Agreement, as amended (the “Risk Pool Agreement”).¹ The Risk Pool Agreement created a risk sharing pool between Hospital and Group for splitting revenue and expenses related to medical services and hospital patient care for member patients (“Member(s)”) of certain prepaid capitated health care plans. The Critical Vendor Agreement ensured that the Group would provide post-petition services under the Risk Pool Agreement. Under the Critical Vendor Agreement, a tradeoff for providing such services is the \$150,000 monthly payment for each post-petition month the Group provided said services. The Debtors have refused to pay for services the Group provided during January 2020.

II. STATEMENT OF FACTS

a) Prepetition Background

¹ Because of its size, the Risk Pool Agreement is not attached. A true and correct copy of the Risk Pool Agreement was previously filed at Doc. 108-2, and Group respectfully asks the Court to take judicial notice thereof.

1 The Group is comprised of approximately 200 doctors who worked at the
2 Hospital. The Group's patients accounted for approximately seven to ten percent of the
3 patients treated at Hospital and generated significant revenue for Hospital as a result of
4 the coordinated medical services administered and managed by Group pursuant to the
5 Risk Pool Agreement. Declaration of Jeffrey Hendel, M.D. ("Hendel Decl."), ¶ 4.

6 The Risk Pool Agreement created a risk sharing pool for revenue and expenses
7 related to medical services and hospital patient care for patients of certain prepaid
8 capitated health care plans (the "Risk Pool").² Hendel Decl. ¶ 5. Essentially, the Risk
9 Pool is comprised of moneys Hospital receives from the capitated healthcare plans as
10 prepayments for all future care Member patients need. Hendel Decl. ¶ 5. Typically, the
11 Risk Pool receives \$1,450,000 monthly from the prepaid capitated health care plans to
12 pay for all institutional charges associated with Member patient care, both those from
13 Verity, as well as third-party charges from outside hospitals, ambulances, hemodialysis,
14 and DME expenses. Hendel Decl. ¶ 5. Both Hospital and the Group have specific duties
15 and rolls under the Risk Pool Agreement pertaining to the Risk Pool. Hendel Decl. ¶ 5.

16 Hospital is responsible for establishing and maintaining the Risk Pool, to which
17 "Hospital Risk Revenues"³ for a calendar year are credited and "Hospital Risk
18 Expenses"⁴ for a calendar year are debited. *See* Risk Pool Agreement ¶ 1.15.

19 Hospital Risk Revenues largely consist of the \$1,450,000 in monthly prepaid
20 capitated payments made by the capitated plans. Hendel Decl. ¶ 6. These capitated
21

22 ² "Risk Pool" is defined in the Risk Pool Agreement (paragraph 1.15) as follows: "Risk
23 Pool shall mean the risk pool established and administered by Hospital under the Critical
24 Vendor Agreement to which Hospital Risk Revenues are credited and from which
25 Hospital Risk Expenses are debited. Although such Risk Pool shall include an
26 aggregation of all Hospital Risk Revenues and Hospital Risk Expenses related to all
Plans, the Risk Pool shall be established so as to allow a separate accounting of an
individual Plan's related Hospital Risk Revenues and Hospital Risk Expenses."

27 ³ As that term is defined in the Risk Pool Agreement at paragraph 1.07.

28 ⁴ As that term is defined in the Risk Pool Agreement at paragraph 1.06.

1 payments are predetermined and fixed; the capitated plans pay a set amount per Member,
2 regardless of the actual amount of services ultimately provided or whether Hospital
3 provides the care or the care is outsourced to a third party facility. Hendel Decl. ¶ 6.
4 These fixed payments are not supplemented if the patient care is underfunded and are not
5 refunded if patient care costs less than what was initially paid by the capitated plan. *See*
6 Hendel Decl. ¶ 6; Risk Pool Agreement ¶ 2.01.

7 The Group manages Member patient care within the confines of the Risk Pool
8 Funds. Hendel Decl. ¶ 7. The Group ensures that Member patients receive top quality
9 medical care while staying at or under budget. Hendel Decl. ¶ 7. Through the Group's
10 effective management, Member patients often receive the medical care they need for less
11 than what was prepaid into the Risk Pool. Hendel Decl. ¶ 7. The extent of the capitated
12 payments that are not ultimately used, utilized, or expensed create, in the aggregate, a
13 surplus which is not returned or refunded to the capitated health care plans. Hendel Decl.
14 ¶ 7. Group and Hospital split this surplus at the end of the year between the Group and
15 Hospital, with the Group's share serving as its sole compensation for its services
16 provided under the Risk Pool Agreement. *See* Risk Pool Agreement ¶ 4.04.

17 **b) Post-Petition**

18 On April 3, 2019, Group and Debtors entered into and executed the Critical
19 Vendor Agreement, a copy of which is attached as **Exhibit A**. The Critical Vendor
20 Agreement designated Group a "Critical Supplier" for Debtors, as Group was critical to
21 patient care, and governed the terms by which Group provided continued services to the
22 Hospital under the Risk Pool Agreement post-petition.

23 Debtors and Group agreed that "until a sale of St. Vincent Medical Center has
24 closed, Verity shall make \$150,000 of interim monthly payments" for services rendered
25 post-petition (the "Interim Settlement Payment(s)"). Critical Vendor Agreement,
26 Paragraph d. This mandatory monthly payment was a material inducement to Group;
27 Group would not have entered into the Critical Vendor Agreement without it. Hendel
28 Decl. ¶ 9. The "payments represent draws against what may be owed to [Group] for the

1 current, post-petition Risk Pool year, and are subject to a True Up as well using
2 Milliman’s calculation for IBNR as agreed by both parties.” Ex. A, paragraph d. This
3 True Up occurs only after the monthly Interim Settlement Payments are made and does
4 not relieve Debtors from making the monthly payments. Hendel Decl. ¶ 9. Instead, it is
5 designed to protect Debtors if those monthly payments ultimately result in an
6 overpayment. *See* Hendel Decl. ¶ 9. After a Risk Pool year closes, Debtors and Group
7 analyze the Hospital Risk Revenues and Hospital Risk Expenses for the Risk Pool year in
8 order to determine the final Risk Pool surplus. Hendel Decl. ¶ 9. This process is a
9 lengthy and time consuming endeavor. Hendel Decl. ¶ 9. The Interim Settlement
10 Payments are then applied to Group’s share of the Risk Pool surplus, followed by a “true
11 up” of the Risk Pool surplus. Hendel Decl. ¶ 9. If there is a resulting underpayment, the
12 Debtors pay that difference. Hendel Decl. ¶ 9. If there is an overpayment (rare), the
13 Group pays that difference. Hendel Decl. ¶ 9.

14 On April 10, 2019, Verity filed the *Debtors’ and Official Committee of Unsecured*
15 *Creditors’ Joint Notice of Motion and Motion for Entry of an Order Pursuant to 11*
16 *U.S.C. §§363 and 105 and Fed. R. Bankr. P. 9019 Authorizing Entry into Settlement*
17 *Agreement with St. Vincent IPA; Memorandum of Points and Authorities; Declaration of*
18 *Richard G. Adcock* seeking approval of the Critical Vendor Agreement. Doc. 2112. The
19 Debtors stated that the “significance of the [Critical Vendor] Agreement is that it will
20 allow [Group] and the Debtors to continue to operate pursuant to Customary Trade Terms
21 until a sale of St. Vincent Medical Center has closed,” without reference to any particular
22 sale, and that “the contractual relationship embodied in the [Critical Vendor] Agreement
23 provides stability, allows for risk sharing between [Group] and the Debtors, and will
24 enable the Debtors to offer continuity of care to patients at St. Vincent Medical Center.”
25 Doc. 2112 at pp. 11 and 13.

26 On May 8, 2019, this Court issued its tentative ruling on the Motion and
27 acknowledged that Debtors’ required monthly Interim Settlement Payments is a material
28 term of the Critical Vendor Agreement. Doc. 2350, the “Tentative Ruling”, pp. 2-3. On

1 May 14, 2019, this Court entered its Order adopting the Tentative Ruling and approved
2 the Agreement. Doc. 2371.

3 The Group thereafter fully performed under the Critical Vendor Agreement and
4 Risk Pool Agreement through January 2020. Hendel Decl. ¶ 10. There has been no
5 closing of a sale of St. Vincent Medical Center. Hendel Decl. ¶ 10. Consequently, the
6 Debtors are obligated to make the January 2020 \$150,000 Interim Settlement Payment.
7 Hendel Decl. ¶ 10. The Debtors have stated that they will not make the January 2020
8 Interim Settlement Payment. Hendel Decl. 10.

9 The parties' Critical Vendor Agreement obligations were designed to continue
10 until the contractual relationship between Group and Hospital terminated, either when
11 Hospital assigns the Risk Pool Agreement to a third party via a sale or when the Risk
12 Pool Agreement is rejected or otherwise terminated. Hendel Decl. ¶ 11. Otherwise,
13 Group would be in a position of having to provide post-petition services to the Debtors
14 without any guarantee or other assurance of payment, particularly in a rapid closure
15 scenario as here. The Group fully performed under its agreements to provide health
16 safety services to the Members. Hendel Decl. ¶ 11. The Debtors should not now be
17 permitted to ignore their reciprocal and Court ordered obligations under that same
18 agreement.

19 On January 6, 2020, the Debtors filed their *Emergency Motion for Authorization to*
20 *Close St. Vincent Medical Center; Memorandum of Points and Authorities and*
21 *Declarations in Support Thereof* (Doc. 3906. "Motion to Close"), seeking approval to
22 expeditiously close the Hospital. On January 9, 2020, the Court approved the Motion to
23 Close (Doc. 3934), permitting a quick, staged cessation of all operations of the Hospital.
24 The order did not extinguish Group's or Debtors' contractual duties under the Critical
25 Vendor Agreement.

26 The Debtors seek to reject the Risk Pool Agreement as of January 31, 2020.
27 *Debtors' Notice of Motion and Motion to Reject, Pursuant to 11 U.S.C. § 365(a), Risk-*
28 *Sharing Agreement with SVIPA; Memorandum of Points and Authorities; Declaration of*

1 *Richard G. Adcock* (Doc. 4051, “Motion to Reject”). The Debtors state that the Group
2 will not “be entitled to further compensation under the Critical Vendor Agreement on or
3 after February 1, 2020.” Motion to Reject, p. 6.

4 The Group provided services under the terms of the Critical Vendor Agreement
5 through January 31, 2020 despite the Hospital eliminating services on-site, outsourcing
6 services traditionally provided to Member patients at the Hospital to third-party providers
7 at a substantially increased expense and to the detriment of Group. Hendel Decl. ¶ 14.

8 **III. ARGUMENT**

9 **The Court should enforce the Critical Vendor Agreement and related Order**
10 **and require the Debtors to timely provide the Group with its compensation for**
11 **services rendered in January 2020.**

12 An agreement to settle a legal dispute is a contract that is enforceable like any
13 other contract. *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989); *Salimi v. BMW Fin.*
14 *Serv. NA, LLC*, 2017 WL 4570367, at *7 (N.D. Cal. Sept. 29, 2017) (“A settlement
15 agreement is a contract, and this Court interprets the settlement agreement under
16 California law”). “Each party agrees to ‘extinguish those legal rights it sought to enforce
17 through litigation in exchange for those rights secured by the contract.’” *Andrus*, 899
18 F.2d at 759. Courts construe orders and consent decrees as contracts. *Id.*

19 The Critical Vendor Agreement is a contract between the Debtors and the Group,
20 approved and ratified by this Court. Pursuant to that contract, Debtors shall make
21 monthly \$150,000 Interim Settlement Payments to the Group for services rendered in any
22 post-petition month. Payments are not discretionary; as long as the Group provides
23 services, it is entitled to payment, subject of a later “true up.” As this Court recognized in
24 its Tentative Ruling, such payments were a material term for the Group to continue
25 providing services post-petition under the Risk Pool Agreement.

26 Group was contractually required to provide services under the Critical Vendor
27 Agreement until January 30, 2020, the date that the Debtors seek to terminate the Risk
28 Pool Agreement. Failure to do so subjected Group to voidability of payments it received

1 pursuant to the Critical Vendor Agreement. The fact that the KPC sale of the Hospital
2 did not occur is of no consequence under the plain terms of the Critical Vendor
3 Agreement and Order.

4 Equity also compels enforcing the Critical Vendor Agreement and requiring the
5 Debtors to make the January Interim Settlement Payment. Group provided services
6 under the Critical Vendor Agreement – both before and after the Debtors filed the Motion
7 to Close – in anticipation that Debtors would pay the Interim Settlement Payment.
8 Further, the Critical Vendor Agreement protects the Debtors from overpayment to the
9 Group if the January 2020 risk pool ultimately has a deficit, as it specifically provides for
10 True Up provisions. Consequently, there is no prejudice to the Debtors.

11 **IV. CONCLUSION**

12 Group provided services under the Court approved Critical Vendor Agreement
13 during January 2020. Under the Critical Vendor Agreement and related Court approval
14 order, Group is entitled to a \$150,000 Interim Settlement Payment for those services.

15 Dated: February 24, 2020

16 CARLTON FIELDS, LLP
17 MARK A. NEUBAUER
18 DONALD R. KIRK
19 RYAN YANT

20 By: /s/ Mark A. Neubauer
21 Mark A. Neubauer
22 Attorneys for St. Vincent IPA
23 Medical Corporation
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DECLARATION OF DR. JEFFREY HENDEL

I, Jeffrey Hendel, M.D., declare as follows:

1. At all times herein mentioned, I am and have been the President of movant St. Vincent IPA Medical Corporation (the “Group”). As President of the Group, I am personally familiar with the Group’s operations, its relationship and dealings with Debtor St. Vincent Medical Center (“Hospital”), Verity Health System of California, Inc. and the above-referenced affiliated Debtors (collectively, the “Debtors”), including the Healthcare Services Risk Sharing Agreement, as amended (collectively the “Risk Pool Agreement”), the Group’s dealings with Hospital and Verity, and the Critical Vendor Agreement. All of the Group’s dealings and transactions with St. Vincent have been and are all conducted either by me or under my supervision, direction and control.

2. Based on my position and activities with the Group, I have personal knowledge of all of the facts set forth in this Declaration and, if called and sworn as a witness at trial or at any other hearing before this Court, would and could testify as set forth in this Declaration.

3. I make this declaration in support of St. Vincent IPA’s Notice of Motion, Motion to Enforce Critical Vendor Agreement, Memorandum and Points of Authority, and Declaration of Dr. Jeffrey Hendel.

4. The Group is comprised of approximately 200 doctors who worked at the Hospital. The Group’s patients accounted for approximately seven to ten percent of the patients treated at Hospital and generated significant revenue for Hospital as a result of the coordinated medical services administered and managed by Group pursuant to the Risk Pool Agreement.

5. The Risk Pool Agreement created a risk sharing pool for revenue and expenses related to medical services and hospital patient care for patients of certain

1 prepaid capitated health care plans (the “Risk Pool”).⁵ Essentially, the Risk Pool is
2 comprised of moneys Hospital receives from the capitated healthcare plans as
3 prepayments for all future care Member patients need. Typically, the Risk Pool receives
4 \$1,450,000 monthly from the prepaid capitated health care plans to pay for all
5 institutional charges associated with Member patient care, both those from Verity, as well
6 as third-party charges from outside hospitals, ambulances, hemodialysis, and DME
7 expenses. Both Hospital and the Group have specific duties and rolls under the Risk Pool
8 Agreement pertaining to the Risk Pool. Hospital is responsible for establishing and
9 maintaining the Risk Pool, to which “Hospital Risk Revenues”⁶ for a calendar year are
10 credited and “Hospital Risk Expenses”⁷ for a calendar year are debited.

11 6. Hospital Risk Revenues largely consist of the \$1,450,000 in monthly
12 prepaid capitated payments made by the capitated plans. These capitated payments are
13 predetermined and fixed; the capitated plans pay a set amount per Member, regardless of
14 the actual amount of services ultimately provided or whether Hospital provides the care
15 or the care is outsourced to a third party facility. These fixed payments are not
16 supplemented if the patient care is underfunded and are not refunded if patient care costs
17 less than what was initially paid by the capitated plan.

18 7. The Group manages Member patient care within the confines of the Risk
19 Pool Funds. The Group ensures that Member patients receive top quality medical care
20 while staying at or under budget. Through the Group’s effective management, Member
21

22 ⁵ “Risk Pool” is defined in the Risk Pool Agreement (paragraph 1.15) as follows: “Risk
23 Pool shall mean the risk pool established and administered by Hospital under the Critical
24 Vendor Agreement to which Hospital Risk Revenues are credited and from which
25 Hospital Risk Expenses are debited. Although such Risk Pool shall include an
26 aggregation of all Hospital Risk Revenues and Hospital Risk Expenses related to all
Plans, the Risk Pool shall be established so as to allow a separate accounting of an
individual Plan’s related Hospital Risk Revenues and Hospital Risk Expenses.”

27 ⁶ As that term is defined in the Risk Pool Agreement at paragraph 1.07.

28 ⁷ As that term is defined in the Risk Pool Agreement at paragraph 1.06.

1 patients often receive the medical care they need for less than what was prepaid into the
2 Risk Pool. The extent of the capitated payments that are not ultimately used, utilized, or
3 expensed create, in the aggregate, a surplus which is not returned or refunded to the
4 capitated health care plans. Group and Hospital split this surplus at the end of the year
5 between the Group and Hospital, with the Group's share serving as its sole compensation
6 for its services provided under the Risk Pool Agreement.

7 8. On April 3, 2019, Group and Debtors entered into and executed the Critical
8 Vendor Agreement, a copy of which is attached as **Exhibit A** to the Memorandum and
9 Points of Authorities. The Critical Vendor Agreement designated Group a "Critical
10 Supplier" for Debtors, as Group was critical to patient care, and governed the terms by
11 which Group provided continued services to the Hospital under the Risk Pool Agreement
12 post-petition.

13 9. Debtors and Group agreed that Debtors would make \$150,000 monthly
14 interim settlement payments to the Group for every month the Group provided services
15 under the Critical Vendor Agreement. These payments are not conditional, and must be
16 paid as long as Group provides services under the Critical Vendor Agreement and Risk
17 Pool Agreement. This mandatory monthly payment was a material inducement to Group;
18 Group would not have entered into the Critical Vendor Agreement without it. The
19 Interim Settlement Payments are preliminary draws against what the Group is ultimately
20 owed as its share of the Risk Pool surplus, and the payments are subject to a true up
21 provision. This True Up occurs only after the monthly Interim Settlement Payments are
22 made and does not relieve Debtors from making the monthly payments. Instead, it is
23 designed to protect Debtors if those monthly payments ultimately result in an
24 overpayment. After a Risk Pool year closes, Debtors and Group analyze the Hospital
25 Risk Revenues and Hospital Risk Expenses for the Risk Pool year in order to determine
26 the final Risk Pool surplus. This process is a lengthy and time consuming endeavor. The
27 Interim Settlement Payments are then applied to Group's share of the Risk Pool surplus,
28 followed by a "true up" of the Risk Pool surplus. If there is a resulting underpayment,

1 the Debtors pay that difference. If there is an overpayment (rare), the Group pays that
2 difference.

3 10. The Group fully performed under the Critical Vendor Agreement and Risk
4 Pool Agreement through January 2020. There has been no closing of a sale of St.
5 Vincent Medical Center. Consequently, the Debtors are obligated to make the January
6 2020 \$150,000 Interim Settlement Payment. The Debtors have stated that they will not
7 make the January 2020 Interim Settlement Payment.

8 11. The parties' Critical Vendor Agreement obligations were designed to
9 continue until the contractual relationship between Group and Hospital terminated, either
10 when Hospital assigns the Risk Pool Agreement to a third party via a sale or when the
11 Risk Pool Agreement is rejected or otherwise terminated. Otherwise, Group would be in
12 a position of having to provide post-petition services to the Debtors without any
13 guarantee or other assurance of payment, particularly in a rapid closure scenario as here.
14 The Group fully performed under its agreements to provide health safety services to the
15 Members. The Debtors should not now be permitted to ignore their reciprocal and Court
16 ordered obligations under that same agreement.

17 12. On January 6, 2020, the Debtors filed their *Emergency Motion for*
18 *Authorization to Close St. Vincent Medical Center; Memorandum of Points and*
19 *Authorities and Declarations in Support Thereof* (Doc. 3906. "Motion to Close"), seeking
20 approval to expeditiously close the Hospital. On January 9, 2020, the Court approved the
21 Motion to Close (Doc. 3934), permitting a quick, staged cessation of all operations of the
22 Hospital. The order did not extinguish Group's or Debtors' contractual duties under the
23 Critical Vendor Agreement.

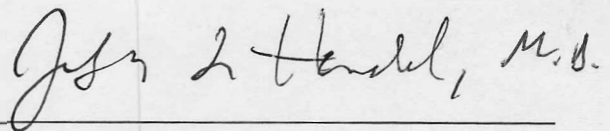
24 13. The Debtors seek to reject the Risk Pool Agreement as of January 31, 2020.
25 *Debtors' Notice of Motion and Motion to Reject, Pursuant to 11 U.S.C. § 365(a), Risk-*
26 *Sharing Agreement with SVIPA; Memorandum of Points and Authorities; Declaration of*
27 *Richard G. Adcock* (Doc. 4051, "Motion to Reject"). The Debtors state that the Group
28

1 will not "be entitled to further compensation under the Critical Vendor Agreement on or
2 after February 1, 2020." Motion to Reject, p. 6.

3 14. The Group provided services under the terms of the Critical Vendor
4 Agreement through January 31, 2020 despite the Hospital eliminating services on-site,
5 outsourcing services traditionally provided to Member patients at the Hospital to third-
6 party providers at a substantially increased expense and to the detriment of Group.

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

10 Executed on February 20, 2020, at Los Angeles, California.

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15 Jeffrey Hendel, M.D.
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EXHIBIT A



2040 E Mariposa Avenue
El Segundo, CA 90245

TO: **St. Vincent IPA**
c/o Mark Neubauer
Carlton Fields

Dear Valued Supplier:

As you are aware, on August 31, 2018 (the "Petition Date"), Verity Health Systems of California, Inc. and its affiliated debtors (collectively, "Verity") filed voluntary petitions (the "Chapter 11 Cases") for relief under chapter 11 of the United States Bankruptcy Code. The Chapter 11 Cases are jointly administered in the United States Bankruptcy Court for the Central District of California ("Bankruptcy Court") under Bankruptcy Case No. 2:18-bk-20151-ER. In recognition of the importance of its relationship with physicians and its desire that the Chapter 11 Cases have as little effect on care provided to patients as possible, Verity sought, and subsequently obtained, the Bankruptcy Court's authority to pay certain prepetition claims, including physician claims (collectively, the "Critical Supplier") that are critical to patient care and to avoid immediate and irreparable harm to Verity's operations. The Bankruptcy Court authorized the Company, under certain conditions, to pay some prepetition claims of Critical Suppliers in an aggregate amount up to \$20 million. A copy of the Court's order (the "Order") authorizing the Critical Supplier protocol is enclosed for your reference.

In order to receive payment of a prepetition claim, each selected Critical Supplier must agree to continue to supply services to Verity based on the customary trade terms, practices and programs in existence between the Critical Supplier and Verity (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, normal availability and other applicable terms and programs), which were in effect between such Critical Supplier and Verity on a historical basis for the period within one-hundred eighty (180) days of the Petition Date and as set forth in the Health Care Risk Pool Sharing Agreement (the "Customary Trade Terms").

For purposes of administering this trade program, as authorized by the Bankruptcy Court and in accordance with the terms of the Order, Verity and **St. Vincent IPA** agree as follows (the "Agreement"):

- a) For purposes of this Agreement, the balance of the prepetition claim (net of any setoffs, credits or discounts) (the "Prepetition Claim") that Verity deems payable for the year 2017 to **St. Vincent IPA** is \$596,816, which sum was paid on December 24, 2018. **St. Vincent IPA** asserts it is owed at least this amount and expressly reserves the right to assert that the amount of the Prepetition Claim is understated and to seek a higher claim amount. This Prepetition Claim is for the year 2017; **St. Vincent IPA** expressly reserves the right to assert an additional prepetition claim for 2016, 2017, and 2018. **St. Vincent IPA** is not bound to this Prepetition Claim amount for any purposes other than for



2040 E Mariposa Avenue
El Segundo, CA 90245

purposes of this Agreement. Thus, **St. Vincent IPA** is not bound to the Prepetition Claim amount for any cure determination, requirements, or otherwise under 11 U.S.C. § 365, any proof of claim amount, or otherwise. Your Prepetition Claim does not constitute a claim allowed by the Bankruptcy Court in the Bankruptcy Cases, and signing this Agreement does not excuse you from any requirement of filing a proof of claim in the Bankruptcy Cases.

- b) In consideration of the payment of the Prepetition Claim, **St. Vincent IPA** has agreed to withhold filing a motion for stay relief to deem the Risk Pool Agreement breached and from seeking to terminate such agreement. The payment of the Prepetition Claim materially induced **St. Vincent IPA** to not file such a motion and to continue to provide services under the Risk Sharing Agreement.
- c) Verity has wired **St. Vincent IPA** an additional \$300,000 as post-petition compensation for services rendered in the months ending September 2018 and October 2018, as payable under the Health Care Risk Sharing Agreement, as amended ("Risk Pool Agreement"), it being understood that the September and October draws may be an overpayment or underpayment—i.e., further sums may be due or may be subject to refund following a true up (the "True Up"), as pursuant to the terms of the Risk Pool Agreement. The True Up will be determined by Milliman (which is expected before March 31, 2019). **St. Vincent IPA** specifically reserves the right to review and challenge this analysis by Milliman, as set forth in the Risk Pool Agreement.
- d) For the months subsequent to October, 2018, until a sale of **St. Vincent Medical Center** has closed, Verity shall make \$150,000 of interim monthly payments, on or about the third week of the month, to **St. Vincent IPA** for services rendered during those post-petition periods. These payments represent draws against what may be owed to **St. Vincent IPA** for the current, post-petition Risk Pool year, and are subject to a True Up as well using Milliman's calculation for IBNR as agreed by both parties. **St. Vincent IPA** specifically reserves the right to review and challenge this analysis by Milliman, as set forth in the Risk Pool Agreement.
- e) The True-Up for 2016, 2017, and 2018 shall occur to determine whether **St. Vincent IPA** is owed additional amounts under the Risk Pool Agreement or whether **St. Vincent IPA** has received overpayments. **St. Vincent IPA** specifically reserves the right to review and challenge this analysis by Milliman, as set forth in the Risk Pool Agreement.
- f) **St. Vincent IPA** agrees to supply goods/services to Verity in accordance with the Customary Trade Terms, and Verity agrees to pay **St. Vincent IPA** in accordance with such Customary Trade Terms.



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g) Your execution of this Agreement and return of the same to Verity constitutes an agreement by **St. Vincent IPA** and Verity:

1. to be bound by the Customary Trade Terms and, subject to the reservations set forth in the Order, to the amount of the Prepetition Claim for the purposes of this Agreement only, as set forth under the terms and conditions above;

2. that **St. Vincent IPA** will continue to supply Verity with goods and/or services pursuant to the Customary Trade Terms and that Verity will timely pay for such goods and/or services in accordance with the Customary Trade Terms;

3. that **St. Vincent IPA** has reviewed the terms and provisions of the Order and that it consents to the bound by such terms, except as modified herein;

4. that, subject to paragraph 7 below, if your participation as a Critical Supplier pursuant to the Order is terminated by you for any reason prior to the closing of any sale of St. Vincent Medical Center, and absent showing of cause by St. Vincent IPA, any payments received by you on account of your Prepetition Claim may be deemed to be a voidable postpetition transfer pursuant to Bankruptcy Code § 549(a) and, if so determined, you will repay to the Debtors any payments made to you on account of your Prepetition Claim to the extent that the aggregate amount of such payments exceeds any postpetition obligations due by Verity to you. However, Verity cannot offset against any postpetition payments or seek to clawback any payment made due to a postpetition claim or services, subject to the True Up described in paragraph c of this Agreement.

5. Payments required under the Risk Share Agreement are modified only to the extent set forth in this agreement, but not otherwise affected.

6. that if Verity shall be in default under this Agreement, **St. Vincent IPA** shall have no obligation to supply goods and/or services to Verity on Customary Trade Terms (as modified herein) until Verity cures such default and **St. Vincent IPA** shall have the right to terminate this Agreement upon written notice to Verity detailing Verity's defaults hereunder (which Verity shall have the right to dispute) and Verity's failure to cure such default within five (5) business days of such notice, in which event **St. Vincent IPA** may retain all sums paid to it hereunder on account of its Prepetition Claim. No § 549(a) claim or action shall arise if such default occurs and is not timely cured by Verity, or if Verity or its assigns seek to terminates, rejects, or does not assume this Agreement or the Risk Pool Agreement.

Nothing herein waives Verity's or **St. Vincent IPA**'s rights under the Bankruptcy Code, including section 365 of the Bankruptcy Code, or any other rights and defenses, including those set forth in the Motion.



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Verity and **St. Vincent IPA** also hereby agree that any dispute with respect to this Agreement, the Order and/or **St. Vincent IPA**'s participation as a Critical Supplier under the Order shall be determined by the Bankruptcy Court.

7. Exclusion. **St. Vincent IPA** shall conduct screenings of its officers, directors, shareholders, associates, employees, contractors or other agents (collectively, the "**St. Vincent IPA Personnel**") who furnish, order or prescribe items or services reimbursable under any federal health program to or for patients of Verity under this Agreement against the List of Excluded Individuals/Entities maintained by the Office of Inspector General ("OIG") of the Department of Health and Human Services, the System for Awards Management ("SAM"; formerly the Excluded Parties List System) and any successor list maintained by the U.S. General Services Administration, and the Medi-Cal Suspended and Ineligible Provider List maintained by the California Department of Health Care Services prior to hire and once a year thereafter. **St. Vincent IPA** will immediately notify Verity in the event **St. Vincent IPA** or one of **St. Vincent IPA** Personnel is excluded from participation in a federal health care program. **St. Vincent IPA** will indemnify Verity for any claims, judgments, overpayments or expenses arising from such exclusion.

8. Anti-Referral Laws. Nothing in this Agreement or in any other written or oral agreement between Verity and **St. Vincent IPA**, nor any consideration offered or paid in connection with this Agreement, contemplates or requires the admission or referral of any patient to Verity. Any consideration specified in this Agreement is consistent with what the parties reasonably believe to be fair market value for the services provided. **St. Vincent IPA** acknowledges and shall cause **St. Vincent IPA** Personnel to acknowledge that it/they are subject to and must comply with certain federal and state laws governing referral of patients, as may be in effect or amended from time to time, including but not limited to: (a) payments for referrals or to induce the referral of patients (Cal. Business and Professions Code Section 650; Cal. Labor Code Section 3215; and the Medicare/Medicaid Fraud and Abuse Law, Section 1128B of the Social Security Act; and all implementing regulations); and (b) the referrals of patients by a physician for certain designated health care services to an entity with which the physician (or his/her immediate family) has a financial relationship (Cal. Business and Professions Code Sections 650.01 and 650.02; Cal. Labor Code Sections 139.3 and 139.31; and Section 1877 of the Social Security Act; and all implementing regulations).

9. Books and Records.

a. Access to Books, Documents and Records. Until the expiration of four years after the furnishing of services under the Agreement, **St. Vincent IPA** agrees to make available to the Secretary of Health and Human Services, the U.S. Comptroller General, and their representatives the Agreement and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If **St. Vincent IPA** carries out the duties of the contract through a subcontract worth \$10,000 or more over a twelve-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records.



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b. Master List. The parties acknowledge that this agreement and any other agreements or arrangements between the parties shall be maintained by Verity as part of its master list of physician contracts.

10. Nothing in this Agreement shall be deemed a waiver of St. Vincent IPA's rights to challenge or contest the assumption of the Risk Pool Agreement by any purchaser of St. Vincent Medical Center, nor shall any action by St. Vincent IPA regarding such potential assumption and assignment be deemed a termination under paragraph 4 above. St. Vincent IPA shall not be subject to a potential § 549(a) action or claim if St. Vincent IPA continues to perform under the Risk Share Agreement until the earlier of (a) a sale of St. Vincent Medical Center or (b) a termination or rejection of this Agreement and/or the Risk Pool Agreement by Verity, its successors, or assigns.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call Peter Chadwick at (202) 329-0003.

Very truly yours,

Verity Health Systems of California, Inc.

By: Anthony A. Armada

Name: Anthony A. Armada

Title: Chief Operating Officer

potential § 549(a) action or claim if St. Vincent Medical Center fails to perform under the Risk Share Agreement. If the Risk Share Agreement is terminated, the sale of St. Vincent Medical Center or (b) a termination or rejection of this Agreement and/or the Risk Pool Agreement by Verity, its successors, or assigns.

If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call Peter Chadwick at (202) 329-0003.

Very truly yours,

Verity Health Systems of California, Inc.

By: _____
Name: Anthony A. Armada
Title: Chief Operating Officer

Agreed and Accepted by:

St. Vincent IPA

By: _____

Name:

Title:

Dated: 4/3, 2019

verity.org

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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:
Carlton Fields, LLP, 2029 Century Park East, Suite 1200, Los Angeles, CA 90067-2913

A true and correct copy of the foregoing document entitled **ST. VINCENT IPA'S NOTICE OF MOTION, MOTION TO ENFORCE CRITICAL VENDOR AGREEMENT, MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF DR. JEFFREY HENDEL** (specify):
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) **02/24/20**, 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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- **James M Toma** james.toma@doj.ca.gov, teresa.depaz@doj.ca.gov
- **Gary F Torrell** gtorrell@health-law.com
- **United States Trustee (LA)** ustpregion16.la.ecf@usdoj.gov
- **Cecelia Valentine** cecelia.valentine@nlrb.gov
- **Jason Wallach** jwallach@ghplaw.com, g33404@notify.cincompass.com
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- **Rose Zimmerman** rzimmerman@dalcycity.org

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) **02/24/20**, 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.

Sam J Alberts
on behalf of Debtor Verity Health System of California, Inc.
DENTONS US LLP
1900 K Street NW
Washington, DC 20006

Tanya M. Moyron, Esq.
Dentons US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, CA 90017-5704

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

Verity Health System of California, Inc.
2040 E. Mariposa Avenue
El Segundo, CA 90245

St. Vincent Medical Center
2131 West Third Street
Los Angeles, CA 90057

Hattie Yip
United States Trustee (LA)
915 Wilshire Blvd, Suite 1850
Los Angeles, CA 90017

James Cornell Behrens
Milbank, Tweed, Hadley & McCloy
2029 Century Park East, 33rd Floor
Los Angeles, CA 90067

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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) **02/24/20**, 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.

Hon. Ernest M. Robles
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1560 / Courtroom 1568
Los Angeles, CA 90012

Via Federal Express

☐ Service information continued on attached page

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

02/24/20
Date

Maria Rodriguez
Printed Name

/s/ Maria Rodriguez
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.